(33,323)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 101

WHITE RIVER LUMBER COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF ARKANSAS EX REL. H. W. APPLEGATE, ATTORNEY GENERAL

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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IN THE SUPREME COURT OF ARKANSAS

No. 92

WHITE RIVER LUMBER COMPANY, Appellant,

vs.

STATE OF ARKANSAS ex Rel. H. W. APPLEGATE, as Attorney General, Appellee

STIPULATION RE TRANSCRIPT OF RECORD

It is stipulated and agreed by the parties hereto that the Clerk of the Supreme Court of Arkansas, in making the transcript of record for the appeal or writ of error in above case, shall include the following:

1. The transcript on appeal from the Chancery Court of Arkansas County to the Supreme Court of Arkansas, except the following parts thereof, which shall be omitted:

That part of page 308 not relating to Big Island Group; all of pages 309, 312, 313, 314, 315, 316, 317, and 318; all of Exhibit "A" to decree.

2. Opinion of Supreme Court of Arkansas.
3. Judgment of Supreme Court of Arkansas.
4. Petition for rehearing in Supreme Court of Arkansas.
5. Order of Supreme Court of Arkansas denying petition for rehearing.
6. Petition for appeal or writ of error.
7. Assignment of errors.
8. Writ of error.
9. Citation.
10. Bond.

Buzbee, Pugh & Harrison, Attorneys for Appellant, White River Lumber Company. R. E. L. Johnson, John M. Rose, Attorneys for Appellee, State of Arkansas ex rel. H. W. Applegate, Attorney General.

[fol. 2] [Caption omitted]

[fol. 3] IN CHANCERY COURT OF ARKANSAS COUNTY

STATE OF ARKANSAS ex Rel. H. W. APPLEGATE, as Attorney General, Plaintiff,

vs.

WHITE RIVER LUMBER COMPANY, Defendant

COMPLAINT—Filed July 25, 1925

Comes the State of Arkansas, on the relation of its Attorney General, both in the State's own right and for the use and benefit of its political sub-divisions, as hereinafter shown, and for cause of action says:

The defendant herein is a private foreign corporation organized under the laws of the State of Michigan prior to the period covered by this complaint, and authorized to do business in the State of Arkansas, its principal place of business being at St. Charles, Arkansas county, in this State.

Defendant was required by law to return annually for taxation all of its outstanding capital stock employed in the State of Arkansas for the years 1915 to 1924, both inclusive, and to make out and deliver to the Assessor of Arkansas county each of said years a sworn statement thereof for the purposes of taxation. Defendant has wholly failed to make out and file said report of its outstanding capital stock for any of said years as required by law.

Plaintiff states that the defendant has for each of said years paid taxes upon real and personal property in Arkansas, but alleges that the aggregate of said assessments did not for any of said years equal the taxable value of its [fol. 4] capital stock, and after deducting from the market value of said capital stock the assessed valuation of tangible property in Arkansas upon which defendant actually paid taxes as provided by statute, there is still a large part of defendant's capital stock upon which no taxes were paid for any of said years, as is hereinafter shown.

Other property in the State of Arkansas was for the years aforesaid assessed under an Order of the State Tax

Commission at fifty per cent of its true and actual value, and defendant's capital stock during said period should have been likewise assessed and extended upon the tax books after deducting the assessments on the tangible property in Arkansas on which defendant actually paid taxes for said years. The taxable situs of said capital stock is, and has been through all of said period, in Arkansas county.

The capital stock of the defendant corporation, is and has been throughout said period, represented largely by valuable timber lands in various counties in Arkansas. The rate of taxation on said capital stock has averaged thirty mills on the dollar for all of said years.

Plaintiff states that part of the capital stock of the defendant corporation is invested in lands in Arkansas county, Arkansas, a more particular description of which is contained in a list hereto attached, marked Exhibit "A," and made a part hereof.

Much of the information, statistics and evcidence upon which plaintiff's case is peculiarly within defendant's knowledge and possession, and plaintiff therefore attaches hereto a list of interrogatories which are hereby pro- [fol. 5] pounded to defendant; and plaintiff prays the court to consider them as a part of this complaint and by proper order to require defendant to file sworn answers thereto within a time to be fixed by the court.

Plaintiff alleges the capital stock of said corporation, for all of said ten year period, to have been, and now to be of the market or actual value of $1,500,000.00 or moore, and the assessed valuation of the tangible property in Arkansas on which defendant paid taxes for each of said years was $200,000.00 or less. After deducting the sum of $200,000 representing the assessed valuation of tangible property on which taxes were paid in Arkansas, from the sum of $1,500,000, the market or actual value of defendant corporation's capital stock, there is a balance of $1,300,000.00 representing the value of defendant's capital stock for intangible property, subject to taxation for each of said ten years. Said $1,300,000.00 capital stock, or intangible property, is assessable at 50 per cent of said amount, or $650,000.00 for each of said years.

Wherefore plaintiff prays judgment against defendant for $195,000.00 representing taxes on said $650,000.00 at

the rate of 30 mills on the dollar for said ten year period, which taxes are overdue and unpaid. And plaintiff prays that after defendant has answered the interrogatories hereto annexed, and after all the testimony herein shall have been produced, it have judgment against defendant for any additional amount which may be shown to be due. If the judgment herein rendered shall not be paid within three months after the rendition thereof, plaintiff prays that it be [fol. 6] given additional for ten per cent of said taxes, as provided by statute, as a penalty. Plaintiff prays that any judgment rendered herein be declared a lien on the capital stock of the defendant company and also on all property of defendant in Arkansas, both tangible and intangible, or so much thereof as may be necessary; and if said judgment be not paid within a time to be fixed by the court, that said capital stock and other property, tangible and intangible, in the State of Arkansas, or so much thereof as may be necessary, be sold to satisfy the said judgment; and plaintiff prays for interest on said judgment, and for all other equitable relief.

H. W. Applegate, Attorney General. R. E. L. Johnson, John M. Rose, Special Counsel.

[fol. 7] Interrogatories

1

1. Make out a statement showing for each of the years 1915 to 1924, inclusive:

(a) The market value, or if no market value, then the actual value of all outstanding capital stock employed in Arkansas.

(b) The assessed valuation of all tangible property, real and personal, in Arkansas, on which taxes were paid for each of said years, giving the amounts separate for each year.

(c) The valuation of the capital stock of your company employed in Arkansas on which said stock was actually assessed for taxation, giving each of said years separately.

(d) The total amount of mortgage indebtedness outstanding against the White River Lumber Company for each of said years separately.

(e) The gross income of your company for each of said years separately.

(f) The net income of the company for each of said years separately.

2. Give in detail all other property owned by your company, real and personal, including cash, bills receivable, credits and all other assets in the State of Arkansas for each of said years, this information to be taken from your regular account books and any other reliable source.

3. In the same manner give in detail all property or assets mentioned in No. 2 above, which the company owned in each of said years outside the State of Arkansas.

4. Give the names and addresses in full of all parties [fol. 8] to whom mortgages or deeds of trust were given by the company, as referred to in No. 1-d above.

5. Give a list of the sales of stock in the White River Lumber Company between 1915 and 1924, by whom made, to whom made, the par value thereof, and the actual price paid therefor, and also giving the full addresses of the sellers and purchasers.

6. State the amount of insurance carried on your plant in Monroe county, giving the names of the insurance companies and the amount of insurance carried by each company.

7. State whether or not you have sold during the last ten years any land belonging to your company in Arkansas county, Arkansas; and if so, state the names and addresses of the parties to whom you sold the lands, the number of acres sold to each, and the price paid by each therefor.

8. State what per cent dividends, whether in cash or in stock, or otherwise, have been paid by your company for each of the aforesaid ten years, separately.

9. State the average value of the stock of lumber and other material which your company has had on hand for each of the aforesaid years, by referring to the books of the company.

10. State both the par value and the market or actual value of stock which your company holds in other corporations or associations, stating the names and addresses of such corporations and associations.

11. Give a full and complete description of any and all securities, including tax exempt securities of the United States, of the States, or other political sub-divisions thereof.

[fol. 9] EXHIBIT "A" TO COMPLAINT

Lands of White River Lumber Company in Arkansas County, Arkansas

Description	Area	Section	Twp.	Range
W. of R. Frl. S. W. ¼	160 91	16	3 South	1 West
W. of R. Frl. N. E. ¼	72 96	19		
W. of R. N. W. ¼	160			
W. of R. Frl. S. W. ¼	81 34			
W. of Chute N. E. ¼	160	22	4	1
E. of Chute, S. ½, N. E. ¼	62 58			
W. of Chute, N. ½, N. W. ¼	80			
W. of Chute, S. E. ¼, N. W. ¼	40			
W. of Chute, N. E. ¼, S. W. ¼	40			
W. of Chute, S. E. ¼	85 20			
W. of Chute, S. ½, S. W. ¼	70 03			
E. of Chute, S. ½, S. ½	258 68			
E. of Chute, N. ½, S. ½	115 83			
N. of Chute, Pt. Frl. N. W. ¼	74 13	23		
S. ½, N. W. ¼	80			
S. W. ¼, N. E. ¼	40			
S. ½	320			
S. ½, N. ½	160	24		
Frl. S. ½	312 77			
W. of R. N. ½	5 81			
E. of R., N. W. ¼	3 42			
Frl. All	574 55	25		
S. & E. of Chute, Frl. All	675 15	26		
E. of Chute, Frl. S. ½	410 51	27		
E. of Chute, N. ½	320			
E. of Chute, Frl.	21 90	33		
W. of Chute, Frl. N. E. ¼	116 89	34		
E. of Chute	383 52			
Both sides of Chute	785 35	35		
Frl. All	583 54	36		
W. of R. & E. of C.	14 57	1	5	1
N. of White River, Frl.	70 48			
W. of R. & E. of C.	602 19	2		
W. of C. & E. of C.	552 77	3		
N. of C. Frl. S. W. ¼	94 39	10		
E. of Chute & W. of River Pt.	384 61			
E. of Chute & W. of River	640	11		
E. of C., W. of R.	76 31	12		
E. of C. & W. of R.	221 07	13		
S. of C., Frl. N. E. ¼	22 81	14		
S. of C. Frl. N. W. ¼	67 50			
W. of C., Frl. N. ½, S. E. ¼	60 50			
Frl. S. W. ¼	160			
E. of C. & W. of R.	178 01			
S. of C. & Frl. N. E. ¼	25 36	15		

Description	Area	Section	Twp.	Range
S. E. ¼	160	..	....	....
E. of C. & W. of R.	222 54	..	....	....
E. ½	320	21	....	....
[fol. 10] N. ½, S.W. ¼	80	..	....	....
S. E. ¼, S. W. ¼	40	..	....	....
All	620	22	....	....
S. W. ¼, N. E. ¼	40	23	....	....
N. W. ¼	160	..	....	....
S. ½	320	..	....	....
All of Frl. W. of R.	177 54	24	5	1
W. ½	320	25	....	....
All	640	26	....	....
All	640	27	....	....
E. ½	320	28	....	....
S. W. ¼, N. W. ¼	40	..	....	....
E. ½, S. W. ¼	80	..	....	....
N. W. ¼, S. W. ¼	40	..	....	....
Lot 5 N. W. ¼	54 57	31	....	....
Lots 4-5 S. W. ¼	117 24	..	....	....
E. ½, S. E. ¼	80	..	....	....
N. W. ¼, S. E. ¼	40	32	....	....
S. ½, S. E. ¼	80	32	5	1
S. W. ¼	160	..	....	....
E. ½	320	33	....	....
E. ½, N. W. ¼	80	..	....	....
N. E. ¼, S. W. ¼	40	..	....	....
N. ½, N. ½, S. E. ¼, S. W. ¼	10	..	....	....
S. ½ of N. ½, S. E. ¼, S. W. ¼	10	..	....	....
S. ½, S. E. ¼, S. W. ¼	20	..	....	....
S. W. ¼, S. W. ¼	40	..	....	....
All	640	34	....	....
All	640	35	....	....
W. of R. Frl.	370 32	36	....	....
S. E. ¼	160	3	6	1
N. E. ¼	160	10	....	....
E. ½	320	17	....	....
Lots 5, 6, 7, 8, N. W. ¼	172 24	19	....	....
Lots 1 to 8 Inc., S. W. ¼	349 73	..	....	....
S. E. ¼	160	22	....	....
W. of R., All Frl.	262 97	23	....	....
W. of R., Frl. N. ½	181 82	26	....	....
N. ½	320	27	....	....
Frl. S. E. ¼	92 03	..	....	....
S. ½, S. W. ¼	80	..	....	....
Frl. W. ½	708 30	30	....	....
All W. of R., E. ½	27 13	33	....	....
All Frl. W. of R.	115 99	34	....	....
All Frl. W. of R.	272 47	4	7	....
Frl. All	1,014 51	6	....	....
N. E. ¼, N. E. ¼	36 15	7	....	....
N. W. ¼, N. E. ¼	40	..	....	....
S. ½, N. E. ¼	85	..	....	....
Frl. Lots 1, 3, 4, 5, 7, 8, N. W. ¼	260 10	..	....	....
Frl. Lot 1, S. W. ¼	45 06	..	....	....
Frl. Lot 2, S. W. ¼	74 31	..	....	....
W. ½, of N. W. ¼	55 27	29	8	1

[fol. 11] [File endorsement omitted.]

[fol. 12] In Chancery Court of Arkansas County

Note re Summons

Summons issued July 25th, 1925, and served on W. W. Keaton, agent for White River Lumber Company, July 31st, 1925.

Duce Pike, Clerk.

[fol. 13] In Chancery Court of Arkansas County

[Title omitted]

Lis Pendens—Filed July 25, 1925

Notice is hereby given that an action has been commenced in the chancery court of Arkansas county by the State of Arkansas, ex rel. H. W. Applegate, as Attorney General, in the State's own right, and for the use and benefit of its political sub-divisions as shown in said suit, against the White River Lumber Company, to collect over-due and unpaid taxes on the capital stock and intangible property of said corporation, which capital stock is represented in part by real estate located in Arkansas county, a more particular description of which is contained in a list hereto attached, marked Exhibit "A", and made a part hereof.

This 25th day of July, 1925.

H. W. Applegate, Attorney General. R. E. L. Johnson, John M. Rose, Special Counsel.

[fol. 14] Exhibit "A"

Lands of White River Lumber Company in Arkansas County, Arkansas

Description	Area	Section	Twp	Range
W. of R. Frl. S. W. ¼	160 91	18	3 South	1 West
Frl. N. E. ¼	72 96	19		
N. W. ¼	160			
W. of R. Frl. S. W. ¼	81 34			
W. of Chute, N. E. ¼	160	22	4	1
E. of Chute, S. ½, N. E. ¼	62 58			

Description	Area	Section	Twp.	Range
W. of Chute, N. ½, N. W. ¼	80	..	....	....
W. of Chute, S. E. ¼, N. W. ¼	40	..	....	....
W. of Chute, N. E. ¼, S. W. ¼	40	..	....	....
W. of Chute, S. E. ¼	85 20	..	....	....
S. ½, S. W. ¼	70 03	..	....	....
E. of Chute, S. ½, S. ½	258 68	..	....	....
E. of Chute, N. ½, S. ½	115 83	..	....	....
N. of Chute Pt., Frl., N. W. ¼	74 13	23	....	....
S. ½, N. W. ¼	80	..	....	....
S. W. ¼, N. E. ¼	40	..	....	....
S. ½	320	..	....	....
S. ½, N. ½	160	24	....	....
Frl., S. ½	312 77	..	....	....
W. of R., N. ½	5 81	..	....	....
E. of R., N. W. ¼	3 42	..	....	....
Frl. All	574 55	25	....	....
S. & E. of Chute, Frl. All	675 15	26	....	....
E. of Chute, Frl. S. ½	410 51	27	....	....
E. of Chute, N. ½	320	..	....	....
E. of Chute, Frl	21 90	33	....	....
W. of Chute, Frl. N. E. ¼	146 89	34	....	....
E. of Chute	383 52	..	....	....
Both sides of Chute	785 35	35	....	....
Frl. All	583 54	36	....	....
W. of R. & E. of C	14 57	1	5	1
N. of White River Frl	70 48	..	....	....
W. of R. & E. of C	602 19	2	....	....
W. of C. & E. of C	552 77	3	....	....
N. of C. Frl. S. W. ¼	94 39	10	....	....
E. of Chute & W. of River Pt	384 61	..	....	....
E. of Chute & W. of River	640	11	....	....
E. of Chute, W. of R	76 31	12	....	....
E. of C. & W. of R	221 07	13	....	....
S. of C. Frl., N. E. ¼	22 81	14	....	....
S. of C. Frl., N. W. ¼	67 50	..	....	....
W. of C. Frl., N. ½, S. E. ¼	60 50	..	....	....
Frl. S. W. ¼	160	..	....	....
E. of C. & W. of R	175 01	..	....	....
S. of C. Frl. N. E. ¼	25 36	15	....	....
S. E. ¼	160	..	....	....
E. of C. & W. of R	222 54	..	....	....
E. ½	320	21	....	....
N. ½, S. W. ¼	80	..	....	....
S. E. ¼, S. W. ¼	40	..	....	....
[fol. 15] All	620	22	....	....
S. W. ¼, N. E. ¼	40	23	....	....
N. W. ¼	160	..	....	....
S. ½	320	..	....	....
All of Frl. W. of R	177 54	24	....	....
W. ½	320	25	5	1
All	640	26	....	....
All	640	27	....	....
E. ½	320	28	....	....
S. W. ¼, N. W. ¼	40	..	....	....
E. ½, S. W. ¼	80	..	....	....
N. W. ¼, S. W. ¼	40	..	....	....
Lot 5, N. W. ¼	54 57	31	....	....
Lots 4-5, S. W. ¼	117 24	..	....	....
E. ½, S. E. ¼	80	..	....	....
N. W. ¼, S. E. ¼	40	32	....	....
S. ½, S. E. ¼	80	32	5	1
S. W. ¼	160	..	....	....
E. ½	320	33	....	....

Exhibit "A"—Continuer

Description	Area	Section	Twp.	Range
E. ½, N. W. ¼	80			
N. E. ¼, S. W. ¼	40			
N. ½, N. ½, S. E. ¼, S. W. ¼	10			
S. ½ of N. ½, S. E. ¼, S. W. ¼	10			
S. ½, S. E. ¼, S. W. ¼	20			
S. W. ¼, S. W. ¼	40			
All	640	34		
All	640	35		
W. of R. Frl.	370 32	36		
S. E. ¼	160	3	6	1
N. E. ¼	160	10		
E. ½	320	17		
Lots 5, 6, 7, 8, S. W. ¼	172 24	19		
Lots 1 to 8 inc., S. W. ¼	349 73			
S. E. ¼	160	22		
W. of R., All Frl.	262 97	23		
W. of R., Frl. N. ½	181 82	26		
N. ½	320	27		
Frl. S. E. ¼	92 03			
S. ½, S. W. ¼	80			
Frl. W. ½	708 30	30		
All W. of R., E. ½	27 13	33		
All Frl. W. of R.	115 99	34		
All Frl., W. of R.	272 47	4	7	1
Frl. All	1 014 51	6		
N. E. ¼, N. E. ¼	36 15	7		
N. W. ¼, N. E. ¼	40			
S. ½, N. E. ¼	80			
Frl. Lots 1, 3, 4, 5, 7, 8, N. W. ¼	200 10			
Frl. Lot 1, S. W. ¼	45 06			
Frl. Lot 2, S. W. ¼	74 31			
W. ½ of N. W. ¼	55 27	29	8	1

[fol. 16] [File endorsement omitted.]

[fol. 17] In Chancery Court of Arkansas County

[Title omitted]

Answer—Filed Oct. 23, 1925

Comes the defendant and for answer says:

It denies that it has failed to make out and file reports of its outstanding capital stock for any of the years named in the complaint as required by law.

It admits that it has, for each of said years, paid taxes upon its real and personal property in Arkansas, but denies that the aggregate of the assessments upon which said taxes were paid did not for any of said years, equal the taxable value of its capital stock.

It denies that after deducting from the market or actual value of said capital stock, the assessed valuation of tangible property in Arkansas upon which it paid taxes as provided by statute, there is still a large part of its capital stock upon which no taxes were paid.

It denies that other property in the State of Arkansas was assessed at 50% of its true and actual value. It denies that any part of its capital stock should have been assessed and extended upon the tax books, and denies that said capital stock had any value after deducting therefrom the assessments on the tangible property in Arkansas on which defendant actually paid taxes for said years.

[fol. 18] It admits that its capital stock has been represented by timber lands in various counties in Arkansas, and alleges that said capital stock has had no value other than the value of said lands.

It denies that the rate of taxation on said capital stock has averaged thirty (30) mills on the dollar for all of said years.

It denies that the taxable situs of said capital stock is in Arkansas county.

It attaches hereto answers to the interrogatories filed by plaintiff, and makes the same a part of this answer.

It denies that the capital stock of said corporation for the period named in the complaint, has had a market or actual value of $1,500,000.00, or more.

It denies that the assessed valuation of the intangible property in Arkansas on which it has paid taxes for each of said years was $200,000.00, or less, but alleges that the assessed valuation of said property has been the amounts set out in the answers to interrogatories attached hereto.

It denies that, after deducting the assessed valuation of tangible property on which taxes were paid in Arkansas from the market or actual value of taxable stock, there is a balance of $1,300,000.00, or any other sum representing the value of its capital or intangible property subject to taxation for each of said years. It denies that said capital stock or intangible property is assessable at 50% for each of said years.

For further answer, defendant alleges that it had never [fol. 19] at any time during the period mentioned in the complaint, owned any property, real or personal, other

than real estate in the State of Arkansas, and that its capital stock has had no value other than that represented by said real estate.

It further alleges that said real estate has been assessed for taxation on a basis higher than the assessment on other real property of like character in the counties in which said real estate is located, and that all taxes based on said assessments have been duly paid.

And, for further answer, defendant alleges that it is a corporation organized under the laws of the State of Michigan; that the situs of its capital stock for taxation is in the State of Michigan and that the same is not subject to taxation in the State of Arkansas.

Wherefore defendant prays to be dismissed.

Buzbee, Pugh & Harrison, Solicitors for Defendant.

Duly sworn to by Thos. A. Buzbee. Jurat omitted in printing.

[fol. 20] Interrogatories and Answers

1. Make out a statement showing for each of the years 1915 to 1924, inclusive?

(a) The market value, or if no market value, then the actual value of all outstanding capital stock employed in Arkansas.

A. There is no market value of this stock. The actual value of all outstanding stock employed in Arkansas is represented by the real estate owned by the company in Arkansas.

(b) The assessed valuation of all tangible property, real and personal, in Arkansas, on which taxes were paid for each of said years, giving the amounts separate for each year.

A. The assessed valuation of all tangible property, real and personal, in Arkansas on which taxes were paid for the years named was as follows: 1915, $126,292; 1916, $129,117; 1917, $141,330; 1918, $153,560; 1919, $188,920; *1919, $188,920;* 1920, $188,870; 1921, $186,540; 1922, $186,540; 1923, $251,620; 1924, $251,680; 1925, $200,480.

(c) The valuation of the capital stock of your company employed in Arkansas on which said stock was actually assessed for taxation, giving each of said years separately.

A. None. The capital stock had no value other than that represented by the real property assessed as set forth above.

(d) The total amount of mortgage indebtedness outstanding against the White River Lumber Company for each of said years separately.

[fol. 21] A. None.

(e) The gross income of your company for each of said years separately.

A. The company has not been engaged in any business except that of holding real estate, and has had no income.

(f) The net income of the company for each of said years separately.

A. The company has had no net income.

2. Give in detail all other property owned by your company, real and personal, including cash, bills receivable, credits, and all other assets in the State of Arkansas, for each of said years, this information to be taken from your regular account books and any other reliable source.

A. The company has not owned any real or personal property except the real estate on which taxes have been paid as above set forth.

3. In the same manner give in detail all property or assets mentioned in No. 2 above which the company owned in each of said years outside the State of Arkansas.

A. The company had no property or assets outside of the State of Arkansas.

4. Give the names and addresses in full of all parties to whom mortgages or deeds of trust were given by the company, as referred to in No. [illegible] above.

A. None.

5. Give a list of the sales of stock in the White River Lumber Company between 1915 and 1924, by whom made, to whom made, the par value thereof, and the actual price paid therefor, and also giving the full addresses of the sellers and purchasers.

[fol. 22] A. No land has been sold by this company during the last ten years.

8. State what per cent dividends, whether in cash or in stock, or otherwise, have been paid by your company for each of the aforesaid ten years, separately.

A. No dividends, in cash, stock or otherwise, have been paid by this company during the last ten years.

9. State the average value of the stock of lumber and other material which your company has had on hand for each of the aforesaid years, by referring to the books of the company.

A. The company has not had any stock of lumber on hand during the last ten years except subsequent to August 15, 1925, when it first commenced the manufacture of lumber.

10. State both the par value and the market or actual value of stock which your company holds in other corporations or associations, stating the names and addresses of such corporations and associations.

A. The company does not hold stock in any other corporations.

11. Give a full and complete description of any and all securities, including tax exempt securities of the United States, of the States, or other political sub-division thereof.

A. The company does not hold any securities of any kind of the United States, or any of the States, or political subdivisions thereof.

[fol. 23] [File endorsement omitted.]

[fol. 24] In Chancery Court of Arkansas County

[Title omitted]

Amendment to Complaint—Filed Feb. 11, 1926

Comes the plaintiff herein and by leave of court files this amendment to its original complaint hereinbefore filed.

Plaintiff states that the defendant corporation owns, and

has owned during the entire period covered by this complaint, enormous tracts of valuable timber lands in various counties in this State. Defendant, together with one or two other corporations owns practically all of the extremely valuable timber in counties hereinafter mentioned. Its assessments has been at the same amount per acre as much of the other less valuable land throughout the county, namely $4.00 an acre, and this assessment constitutes a gross undervaluation of said property because of its being much more valuable than any other timber land in the said counties, and is far below a 50% assessment. Under an order of the Tax Commission of the State of Arkansas all property is required to be assessed at 50% of its true value.

Plaintiff states that defendant owns 12,500 acres, more or less, of timber land in Desha county, which is reasonably worth over $30.00 an acre and should, under the aforesaid order of the Tax Commission, have been assessed at 50% thereof, or $15.00 an acre, or more, whereas, it was grossly [fol. 25] underassessed at $4.00 an acre, so that there are $41,250.00 unpaid taxes due plaintiff thereon.

Defendant owns 6,500 acres, more or less, of timber land in Phillips county reasonably worth over $30.00 an acre and which should have likewise been assessed at $15.00 an acre, or more, but which was also grossly underassessed at $4.00 an acre, so that there are $21,450.00 unpaid taxes due plaintiff thereon.

Defendant owns 18,500 acres, more or less, of timber land in Arkansas county, of which 7,200 acres, known as "Big Island" are worth over $50.00 an acre, and the balance, 11,300 acres is worth over $30.00 an acre. The aforesaid 7,200 acres should have been assessed at 50% of the aforesaid value, or $25.00 per acre, or more, and the aforesaid 11,300 acres should have been assessed accordingly at $15.00 an acre, whereas, all of said lands have been grossly underassessed at $4.00 an acre, so that there are $82,650.00 unpaid taxes due plaintiff thereon.

Defendant owns 4,000 acres, more or less, of timber lands in Monroe county, of which 2,000 acres have been fairly assessed. The other 2,000 acres of said timber lands are worth over $50.00 an acre, and should have been assessed at 50% thereof, or $25.00 per acre; whereas, said lands

have in fact been assessed at $5.00 an acre for the years 1915 to 1922, inclusive, and assessed at $17.50 per acre for the years 1923 and 1924, so that there are $10,500.00 unpaid taxes due plaintiff thereon.

Plaintiff states that the aforesaid lands have been worth the amounts aforesaid for all of the ten year period and [fol. 26] the assessments have been the same for all of said period. The rate of taxation in all of said counties for all of said years has averaged 30 mills on the dollar. The exact rates for each year will be produced upon the trial of this cause.

Wherefore plaintiff prays judgment for the sum of $41,250.00 for taxes past due and unpaid for said ten year period, 1915 to 1924, at the aforesaid rate, on the lands in Desha county; for $21,450 unpaid taxes on the aforesaid lands in Phillips county; for $82,650.00 unpaid taxes on the aforesaid lands in Arkansas county; for $10,500.00 unpaid taxes on the aforesaid lands in Monroe county, or a total of $155,850.00, or such other amount as may be shown to be due, representing the total amount of taxes due on all of the aforesaid lands. And plaintiff prays, after the additional assessment of lands as aforesaid, that it have judgment on such amount of intangible property, or capital stock, of the defendant corporation as it may be shown to be entitled to, as prayed in the original complaint herein filed.

H. W. Applegate, Attorney General. R. E. L. Johnson, John M. Rose, Special Counsel.

[File endorsement omitted.]

[fol. 27] In Chancery Court of Arkansas County

[Title omitted]

Answer to Amendment to Complaint—Filed Feb. 12, 1926

Comes the defendant, and for answer to the amendment to complaint, says:

It denies that, it owns practically all of the valuable timber in the counties named in the amendment to complaint.

It does not know, and hss no information upon which to found a belief as to whether or not its lands has been assessed at the same amount per acre as other land throughout the counties, to-wit: Four Dollars ($4.00) an acre, as alleged, and therefore denies the same; but it admits and alleges that its land has been assessed on the same basis of value as other lands throughout the said counties.

It denies that the assessments as made on its land constituted a gross undervaluation of said land.

It denies that said land is more valuable than any other land in said counties, and denies that its assessment is far below a fifty per cent (50%) assessment.

It denies that its land in Desha county is worth Thirty Dollars ($30.00) an acre, and denies that said land should have been assessed at fifty per cent (50%) thereof, or $15.00 an acre.

[fol. 28] It denies that there are $41,250.00, or any other amount of unpaid taxes due on said land.

It denies that its land in Phillips county is worth Thirty Dollars ($30.00) an acre, and denies that said land should have been assessed at Fifteen Dollars ($15.00) an acre, or more.

It denies that there are $21,450.00, or any other amount of unpaid taxes now due on said land.

It denies that its land on Big Island, in Arkansas county, is worth Fifty Dollars ($50.00) an acre, and that the balance of its land in Arkansas county is worth $30.00 an acre. It denies that 7200 acres of said land should have been assessed at $25.00 per acre, or more, and that 11,300 acres of said land should have been assessed at $15.00 an acre.

It denies that there are $82,650.00, or any other amount, of unpaid taxes due on said land.

It denies that two thousand (2,000) acres, or any other amount of its lands in Monroe county, are worth over $50.00 an acre, and that same should have been assessed at 50% thereof, or $25.00 an acre. It denies that there are $10,500.00 or any other amount of unpaid taxes now due on said land.

It denies that the aforesaid lands have been worth the amounts alleged for all of the ten (10) year period set forth in the complaint, and that the rate of taxation in all of said counties for all of said years has averaged thirty mills, more or less, on the Dollar.

II

And for further answer to the amendment to the complaint, defendant says:

[fol. 29] That this suit is brought under the pretended authority of Section 10204 Crawford & Moses' Digest of the Statutes of Arkansas; that during all of the years, and in all of the counties set forth in the complaint, the lands of defendant have been assessed for taxation on the same basis of valuation as all other property and lands in said counties; that there are large tracts of timber lands in said counties similar to and of equal value with the lands of defendant, some of which other lands are owned by corporations, but large tracts of which are owned by individuals; and have been assessed for taxation on the same basis of valuation as the lands of defendant, or lower; that to enforce Section 10204 of Crawford & Moses' Digest against defendant, as attempted herein, would result in the lands of defendant being assessed on a greater and higher basis of valuation than other lands and other property of like value and of like character, belonging to other corporations and individuals, are assessed; and that the result of said method of enforcement of said Act would be to violate Section 5, Article 16 of the Constitution of Arkansas, which provides that all property subject to taxation shall be taxed according to its value, to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State.

Defendant alleges, therefore, that Section 10204, as attempted to be enforced herein is repugnant to Section 5, Article 16 of the Constitution of Arkansas.

III

Defendant further alleges that the enforcement of said [fol. 30] Section, in the manner above set forth, and for the reasons set out in paragraph Two hereof, would deprive

this defendant of its property without due process of law, and deny to it the equal protection of the law. That, therefore, said section, as attemped to be enforced, is repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that, no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

IV

And for further answer to both the original and amendment to complaint herein, defendant says:

That the alleged cause of action set forth in the original and amendment to complaint for taxes accruing prior to the year 1922, and due to counties, cities, towns and school districts, are barred by the statutes of limitations of three years.

Wherefore defendant prays to be dismissed with its costs.

Buzbee, Pugh & Harrison, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 31] In Chancery Court of Arkansas County

[Title omitted]

Amended Answers to Interrogatories—Filed Feb. 12, 1926

Comes the defendant and files its amended answers to interrogatories, as follows:

1. Make out a statement showing for each of the years 1915 to 1924, inclusive.

(a) The market value, or if no market value, then the actual value of all outstanding capital stock employed in Arkansas.

A. There is no market value of this stock. The actual value of all outstanding stock employed in Arkansas is

represented by the real estate owned by the company in Arkansas.

(b) The assessed valuation of all tangible property, real and personal, in Arkansas, on which taxes were paid for each of said years, giving the amounts separate for each year.

A. The assessed valuation of all tangible property, real and personal, in Arkansas, on which taxes were paid for the years named was as follows: 1915, $126,292; 1916, $129,117; 1917, $141,330; 1918, $153,560; 1919, $188,920; 1920, $188,870; 1921, $186,540; 1922, $186,540; 1923, $251,620; 1924, $251,680; 1925, $209,480.

[fol. 32] (c) The valuation of the capital stock of your company employed in Arkansas on which said stock was actually assessed for taxation, giving each of said years separately.

A. None. The capital stock had no value other than that represented by the real property assessed as set forth above.

(d) The total amount of mortgage indebtedness outstanding against the White River Lumber Company for each of said years separately.

A. None.

(e) The gross income of your company for each of said years separately.

A. The company has not engaged in any business, except that of holding real estate, and has had no gross income, except as follows:

In 1918, it was discovered that a number of persons had, without right or authority, cut and removed a large amount of logs from the lands of defendant. These depredations had been carried on to such an extent as to take all of the timber from a large part of defendant's lands.

Suits were started immediately against a large number of persons to recover for logs taken and to enjoin further depredations. As a result of this litigation, the defendant, in 1919 and 1920, recovered and collected a gross sum of $31,915.40.

The defendant, thereupon, finding it necessary to protect some of its property, engaged in logging operations, and since that time, has sold logs as follows:

[fol. 33]

Purchaser	Amount	Gross income
1919		
Chicago Mill & Lumber Co	540,654'	$9,669 75
Galloway-Kennedy Co	164,489'	2,550 75
Thane Lumber Company	131,381'	2,388 10
	836,524'	14,608 60
1920		
Chicago Mill & Lumber Co	1,644,555'	$30,503 59
Saginaw Cooperage Co	1,879,926'	51,493 15
Thane Lumber Company	326,716'	9,203 90
J. H. Leavenworth & Son	261,350'	7,093 25
	4,112,447'	98,293 89
1921		
Saginaw Cooperage Co	1,637,630'	$39,217 98
T. C. Shelton	2,726'	75 65
1922		
Chicago Mill & Lumber Company	361,395'	$5,403 31
Mengel Company	808,305'	12,932 88
Lumber Account "G"	1,535,029'	
	2,704,729'	18,336 19
1923		
Chicago Mill & Lumber Company	618,784'	$10,367 16
F. T. Dudley Lbr. Co	1,098,487'	28,108 72
Mengel Company	1,296,524'	31,239 77
Kennedy Mfg. Company	676,955'	16,794 41
Breece-White Mfg. Co	6,493,761'	134,220 72
Dudley Lumber Co	156,640'	4,961 04
P. H. Joest	6,000'	60 00
	10,347,151'	225,751 82
1924		
Breece-White Mfg. Co	1,986,176'	$38,719 98
Southwestern Veneer Co	687,879'	18,864 99
M. G. Vandeventer	9,943'	432 17
Kennedy Mfg. Co	92,340'	2,308 50
J. H. Leavenworth & Son	159,952'	1,759 47
	2,936,290'	62,085 11
[fol. 34] **1925**		
Kennedy Mfg. Co	124,597'	821 90
J. J. Nartzik	16,268'	294 65
Stimson Veneer Lbr. Co	99,993'	2,282 34
	240,858'	3,397 89

(f) The net income of the Company for each of said years separately.

A. The company has had no net income.

2. Give in detail all other property owned by your company, real and personal, including cash, bills receivable, credits, and all other assets in the State of Arkansas for each of said years, this information to be taken from your regular account books and any other reliable source.

A. The company has not owned any real or personal property except the real estate on which taxes have been paid as above set forth.

3. In the same manner, give in detail all property or assets mentioned in No. 2 above, which the company owned in each of said years outside the State of Arkansas.

A. The company had no property or assets outside of the State of Arkansas.

4. Give the names and addresses in full of all parties to whom mortgages or deeds of trust were given by the company, as referred to in No. 1-d above.

A. None.

5. Give a list of the sales of stock in the White River Lumber Company between 1915 and 1924, by whom made, to whom made, the par value thereof, and the actual price paid therefor, and also giving the full addresses of the [fol. 35] *of the* sellers and purchasers.

A. Between the years 1915 and 1924, there has been only one sale of stock of this company. This sale was agreed upon September 16, 1924. The vendors in this sale were the following: Katherine W. Altland, Grosse Points Farms, Michigan; Woodburg Ranson, Kalamazoo, Michigan; A. E. Curtenius, Kalamazoo, Michigan; D. R. Curtenius, Kalamazoo, Michigan; Mrs. Helen R. C. Statler, Kalamazoo, Michigan; and the vendee was William W. Keaton, Clarendon, Arkansas. The par value of the stock sold to Mr. Keaton was $7,353.33. The price agreed upon was $25,000.00.

6. State the amount of insurance carried on your plant in Monroe county, giving the names of the insurance companies and the amount of insurance carried by each company.

A. The construction of this plant was commenced after January 1, 1925, and was not completed until several months later. The insurance carried thereon, as of September 30, 1925, is as follows:

Name of company	Date of pol.	Sawmill bldg.	Mchr'y & equip.	Office F. & F.	Libr.
Commercial Union	June 17, 1925	.....	.....	2,000.00	.....
Hartford	June 17, 1925	1,250 00	3,750 00	.....	.....
Home Ins. Co	June 17, 1925	1,250 00	3,750 00	.....	.....
Hartford	June 17, 1925	2,500 00	7,500 00	.....	.....
Hartford	June 17, 1925	2,500 00	7,500 00	.....	.....
Aetna	July 2, 1925	1,250 00	3,750 00	.....	.....
Great American	July 2, 1925	1,250 00	2,750 00	.....	.....
Commercial Union	Aug. 15, 1925	.....	.....	.....	10,000 00
Hartford	Aug. 15, 1925	.....	.....	.....	25,000 00
Great American	Aug. 15, 1925	.....	.....	.....	15,000 00
Fireman's Fund	Aug. 15, 1925	.....	.....	.....	10,000 00
		10,000 00	30,000 00	2,000 00	60,000 00

7. State whether or not you have sold during the last ten years any land belonging to your company in Arkansas [fol. 36] county, Arkansas; and if so, state the names and addresses of the parties to whom you sold the lands, the number of acres sold to each, and the price paid by each therefor.

A. No land has been sold by this company during the last ten years.

8. State what per cent. dividends, whether in cash or in stock, or otherwise, have been paid by your company for each of the aforesaid ten years, separately.

A. No dividends, in cash, stock or otherwise, have been paid by this company during the last ten years.

9. State the average value of the stock of lumber and other material which your company has had on hand for each of the aforesaid years, by referring to the books of the company.

A. The company has not had any stock of lumber on hand during the last ten years except subsequent to August 15, 1925, when it first commenced the manufacture of lumber.

10. State both the par value and the market or actual value of stock which your company holds in other corporations or associations, stating the names and addresses of such corporations and associations.

A. The company does not hold stock in any other corporation.

11. Give a full and complete description of any and all securities, including tax exempt securities of the United

States, of the States, or other political sub-divisions thereof.

A. The company does not hold any securities of any kind [fol. 37] of the United States, or of the State, or political sub-divisions thereof.

Daniel F. Altland.

Duly sworn to by Daniel F. Altland. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 38] In Chancery Court of Arkansas County

[Title omitted]

Answer to Amendment to Complaint

For answer to the amendment to the original complaint and amendment thereto, defendant says:

It denies that all of four thousand (4,000) acres of land belonging to it in Monroe county, or any part thereof, are worth over $30.00 an acre, and denies that said land, or any part thereof, has been underassessed for any of the years set forth in the complaint.

Wherefore defendant prays to be dismissed.

Buzbee, Pugh & Harrison, Attorneys for Defendant.

To be filed as of this date, 2/1/27.

Harvey R. Lucas, Chancellor.

[fol. 39] In Chancery Court of Arkansas County

[Title omitted]

Amendment to Complaint—Filed Jan. 23, 1927

Comes the plaintiff and by leave of court files this amendment to the original complaint and amendment thereto already filed herein.

Plaintiff states that the value of the timber lands sued on herein was the same for each of the years 1925 and 1926 as was heretofore alleged for prior years. Plaintiff also alleges that the rates of taxation applicable to said lands, and the assessment of said lands for taxation, were the same for the years 1925 and 1926 as alleged for former years. Plaintiff states that in the former amendment to its complaint herein it is stated that 2,000 acres of the 4,000 acres owned by defendant in Monroe county were fairly assessed, and that the other 2,000 acres are worth over $50.00 an acre. Upon further investigation plaintiff finds, and therefore alleges, that all of said 4,000 acres are worth over $50.00 an acre and all are grossly under-assessed.

Plaintiff attaches hereto a description of the lands sued on herein, which is marked Exhibit "A," and asks that the same be made a part hereof.

Wherefore plaintiff prays that in addition to the judg-
[fol. 40] ment asked in its original complaint and amendment heretofore filed, it be given judgment on all of said lands for overdue and unpaid taxes at the rates heretofore set out, and at fifty per cent, of the actual value of said lands for the respective years 1915 to 1926, inclusive, after deducting the assessments actually made by defendant, and for all other equitable relief.

H. W. Applegate, Attorney General. R. E. L. Johnson, John M. Rose, Special Counsel.

[fol. 41] EXHIBIT "A" TO AMENDMENT

White River Lumber Company's Lands in Desha County

	Section	Township	Range	Acres
S. ½	2	7 S.	1 W.	291 44
N. of R. S. ½, N. W. ¼	2	7 S.	1 W.	47 82
S. of R. S. ½, N. W. ¼	2	7 S.	1 W.	19 02
Pt. E. ½, N. W. ¼	2	7 S.	1 W.	72 51
Frl. S. ½	3	7 S.	1 W.	288 19
E. of R. Frl. S. ½, N. E. ¼	3	7 S.	1 W.	52 15
Frl. E. ½	4	7 S.	1 W.	216 19
S. of R. Frl. S. W. ¼	7	7 S.	1 W.	121 31
N. W. ¼, N. W. ¼	9	7 S.	1 W.	40
S. ½, N. W. ¼	9	7 S.	1 W.	80
S. W. ¼	9	7 S.	1 W.	160
N. W. ¼, S. E. ¼	9	7 S.	1 W.	40
S. ½, S. E. ¼	9	7 S.	1 W.	80

Exhibit "A" to Amendment—Continued

	Section	Township	Range	Acres
S. of B. Pt., N. E. ¼	10	7 S.	1 W.	8 81
Frl., N. E. ¼	10	7 S.	1 W.	133 60
Frl. W. ½	10	7 S.	1 W.	301 94
W. of B. Pt., N. ½	11	7 S.	1 W.	254 68
Frl. S. ½, N. W. ¼	11	7 S.	1 W.	38 73
N. of B., N. E. ¼, S. E. ¼	11	7 S.	1 W.	6 47
Frl. N. ½	12	7 S.	1 W.	276 74
Frl. N. ½, S. ½	12	7 S.	1 W.	136 04
W. ½	14	7 S.	1 W.	320
W. of B. All	15	7 S.	1 W.	360 07
E. of B. Frl., S. E. ¼, S. E. ¼	15	7 S.	1 W.	49 40
S. ½, W. ½	17	7 S.	1 W.	80
S. ½, N. W. ¼	17	7 S.	1 W.	80
E. of B., N. W. ¼, N. W. ¼	17	7 S.	1 W.	38 19
Frl. All	18	7 S.	1 W.	940 64
Frl. All	19	7 S.	1 W.	1011 76
Frl. All	20	7 S.	1 W.	640
All	21	7 S.	1 W.	640
Frl. All	22	7 S.	1 W.	575 07
Frl. All	28	7 S.	1 W.	630 76
All	29	7 S.	1 W.	640
Frl. All	30	7 S.	1 W.	1023 04
Res.	31	7 S.	1 W.	999 38
All	32	7 S.	1 W.	640
Res.	33	7 S.	1 W.	480
Frl. N. W. ¼	34	7 S.	1 W.	155 61
S. E. ¼	35	7 S.	1 W.	160
W. ½	8	8 S.	1 W.	320

[fol. 42] White River Lumber Company's Lands in Phillips County

Parts of Section	Section	Township	Range	Acres
All	1	5 S.	1 W.	452 85
E. Pt. S. E. ¼	2	5 S.	1 W.	6 44
All Frl.	12	5 S.	1 W.	496 88
Frl. N. E. ¼	24	5 S.	1 W.	159 73
N. ½ Frl., N. W. ¼	24	5 S.	1 W.	75 02
N. E. Pt. S. ½ Frl. N. W. ¼	24	5 S.	1 W.	41 76
N. E. Cor., N. E. ¼	36	5 S.	1 W.	95
S. E. Cor., N. E. ¼	36	5 S.	1 W.	30 08
Frl. S. E. ¼	36	5 S.	1 W.	153 45
S. E. Pt., S. W. ¼	36	5 S.	1 W.	6 27
All Frl.	11	6 S.	1 W.	428 37
All Frl.	12	6 S.	1 W.	621 26
All Frl.	14	6 S.	1 W.	361 74
All Frl.	23	6 S.	1 W.	291 26
All Frl.	24	6 S.	1 W.	640
All	25	6 S.	1 W.	640
All	26	6 S.	1 W.	368 72
All Frl.	27	6 S.	1 W.	31 93
E. Pt., S. E. ¼	3	6 S.	1 W.	21 50
S. E. Pt., S. E. ¼	34	6 S.	1 W.	441 52
All Frl.	35	6 S.	1 W.	620 63
All Frl.	36	6 S.	1 W.	640
All				

[fol. 43] White River Lumber Company Lands in Monroe County

Description	Section	Township	Range	Acres
S. ½, N. E.	8	3 S.	1 W.	80
N. E., S. E.	8	"	"	40
N. W., S. W.	9	"	"	40
S. ½, S. W.	9	"	"	80
Pt., S. W.	15	"	"	120
N. E., S. W.	15	"	"	40
Frl. S. W.	19	"	"	172 31
Frl. N. ½, S. E.	29	"	"	54 85
Frl. N. ½, N. W.	30	"	"	107 22
Frl. E. ½, S. E.	32	"	"	42 61
Frl. N. ½	1	4 S.	1 W.	113 03
Frl. S. W.	1	"	"	151 52
W. Pt., Frl. S. E.	1	"	"	46 86
All Frl	2	"	"	586 30
All Frl	3	"	"	643 57
Frl. E. ½	4	"	"	290 24
Frl. N. ½, N. W.	4	"	"	79 88
Frl. All	10	"	"	550 03
All	11	"	"	640
W. Pt., Frl. E. ½	12	"	"	76 37
Frl W. ½	12	"	"	311 87
Frl. N. ½	14	"	"	306 54
Frl. N. W., S. E.	14	"	"	39 83
Frl. Pt., S. ½, N. of R.	14	"	"	
Spt., S. W.	14	"	"	151 33
Spt., S. E.	14	"	"	140 85
E. Frl., N. E.	15	"	"	60 52
				4,965 73

[fol. 44]

Lands of White River Lumber Company in Arkansas County, Arkansas

7,426.29 Acres on Big Island Valued at Exceeding $65.00 per acre.

Description	Area	Section	Twp.	Range
E. of Chute, S. ½, S. ½	258 68	22 on Island	4 South	1 West
E. of Chute, N. ½, S. ½	115 83	" " "		
N. of Chute, Pt. Frl. N. W. ¼	74 13	23 All on Island		
S. ½, N. W. ¼	80			
S. W. ¼, N. E. ¼	40			
S. ½	320			
S. ½, N. ½	160	24 " " "		
Frl. S. ½	312 77			
W. of R. N. ½	5 81			
E. of R., N. W. ¼	3 42			
Frl. All	574 55	25 " " "		
S. & E. of Chute Frl. All	675 15	26 " " "		
E. of Chute Frl. S. ½	410 51	27 " " "		
E. of Chute, N. ½	320	" " "		
E. of Chute, Frl.	21 90	33 " " "		
W. of Chute, Frl. N. E. ¼	146 89	34 " " "		
E. of Chute	383 52			
Both Sides of Chute	785 35	35 " " "		
Frl. All	583 54	36 " " "		
W. of R. & E. of C.	14 57	1 " " 5		1
N. of White River, Frl.	70 48			
N. of R. and E. of C.	602 19	2 " " "		
E. of Chute & W. of River Pt.	384 61	10 " " "		
E. of Chute & W. of River	640	11 " " "		
E. of C., W. of R.	76 31	12 " " "		
E. of C. and W. of R.	221 07	13 " " "		
E. of C., and W. of R.	175 01	" " "		

Exhibit "A" to Amendment—Continued

Description	Area		Section		Twp.	Range
537 81 Acres Adjoining Big Island Valued at Exceeding $65.00 per Acre.						
W. of Chute, N. E. ¼	160		22		4	1
E. of Chute, S. ½, N. E. ¼	62	58				
W. of Chute, N. ½, N. W. ¼	80					
W. of Chute, S. E. ¼, N. W. ¼	40		500 A tract not in Island			
W. of Chute, N. E. ¼, S. W. ¼	40					
W. of Chute, S. E. ¼	85	20				
S. ½, S. W. ¼	70	03				
13 374 83 Acres in Arkansas County Valued at Exceeding $30.00 per Acre						
W. of R., Frl. S. W. ¼	160	91	18		3	1
Frl., N. E. ¼	72	90	19			
N. W. ¼	160					
W. of R., Frl. S. W. ¼	81	34				
W. of C., Frl. S. W. ¼	552	77	3 Part on Island		5	1
N. of C., Frl. S. W. ¼	94	39	10 not " "			
S. of C., Frl. N. E. ¼	22	81	14		5	1
[fol. 45]						
S. of C., Frl. N. W. ¼	67	50	"		"	"
W. of C., Frl. N. ½, S. E. ¼	60	50	"		"	"
Frl. S. W. ¼	160		"		"	"
S. of C., Frl. N. E. ¼	25	36	15			
S. E. ¼	160					
E. of C. & W. of R.	222	54				
E. ½	320		21			
N. ½, S. W. ¼	80					
S. E. ¼	40					
All	620		22			
S. W. ¼, N. E. ¼	40		23			
N. W. ¼	160					
S. ½	320					
All of Frl. W. of R.	177	54	24			
W. ½	320		25			
All	640		26			
All	640		27			
E. ½	320		28			
S. W. ¼, N. W. ¼	40					
E. ½, S. W. ¼	80					
N. W. ¼, S. W. ¼	40					
Lot 5, N. W. ¼	54	57	31			
Lots 4, 5, S. W. ¼	117	24				
E. ½, S. E. ¼	80					
N. W. ¼, S. E. ¼	40		32			
S. ½, S. E. ¼	80		32		5	1
S. W. ¼	160		32			
E. ½	320		33			
E. ½, N. W. ¼	80					
N. E. ¼, S. W. ¼	40					
N. ½, N. ½, S. E. ¼, S. W. ¼	10					
S. ½ of N. ½, S. E. ¼, S. W. ¼	10					
S. ½, S. E. ¼, S. W. ¼	20					
S. W. ¼, S. W. ¼	40					
All	640		34			
All	640		35			
W. of R. Frl.	370	32	36			
S. E. ¼	160		3		6	1
N. E. ¼	160		10			
E. ½	320		17			
Lots 5, 6, 7, & 8, N. W. ¼	172	24	19			
Lots 1 to 8, Inc., S. W. ¼	349	73				

Description	Area	Section	Twp.	Range
S. E. ¼	160	22		
W. of R., All Frl	262 97	23		
W. of R., Frl. N. ½	181 82	26		
N. ½	320	27		
Frl., S. E. ¼	92 03			
S. ½, S. W. ¼	80			
Frl. W. ½	708 30	30		
All W. of R., E. ½	27 13	33		
All Frl. W. of R	115 99	34		
All Frl. W. of R	272 47	4	7	1
Frl. All	1,014 51	6		
N. E. ¼, N. E. ¼	36 15	7		
N. W. ¼, N. E. ¼	40	7	7	1
[fol. 46]				
S. ½, N. E. ¼	86			
Frl. Lots 1, 3, 4, 5, 7, 8, N. W. ¼	260 10			
Frl. Lot 1, S. W. ¼	45 06			
Frl. Lot 2, S. W	74 31			
W. ½, of N. W. ¼	55 27	29	8	1

[File endorsement omitted.]

[fol. 47] In Chancery Court of Arkansas County

[Title omitted]

Statement of Evidence

Depositions of witnesses produced, sworn, and examined on the sixth day of March, A. D. 1926, between legal hours, before Walter Powell, a notary public within and for Pulaski county, Arkansas, duly commissioned, qualified and acting, at the law offices of John M. Rose, Esqr., in the Home Insurance Building, in the city of Little Rock, Arkansas, upon the part of the plaintiff in the above-styled cause, now pending in the above-entitled court, all formalities of taking, transcription, and transmission being by counsel waived, all pursuant to an agreement between respective counsel herein appearing

Appearances

For the Plaintiff: John M. Rose, Esqr.

For the Defendant: Buzbee, Pugh & Harrison, by T. S. Buzbee, Esqr.

[fol. 48] S. B. Dennison, of lawful age, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the plaintiff, testified as follows:

Direct examination.

Questions by Mr. Rose:

Q. Your name is S. B. Dennison?
A. Yes, sir.
Q. Where do you live, Mr. Dennison?
A. Stuttgart, Ark.
Q. How long have you lived there?
A. I have lived at Stuttgart three and a half years.
Q. Where did you live before that?
A. St. Charles.
Q. In Arkansas county?
A. Arkansas county.
Q. How long did you live at St. Charles?
A. Twenty years.
Q. Twenty years?
A. Yes, sir.
Q. What business are you in?
A. Timber business.
Q. Do you buy and sell timber lands?
A. Yes, sir.
Q. How long have you been in that business?
A. Well, about nine or ten years.
Q. Are you familiar with the values of timber lands in Arkansas county?
A. Yes, I have bought several tracts and sold several tracts in Arkansas county.
[fol. 49] Q. And the lands surrounding Arkansas county, in——
A. Yes, sir.
Q. — Phillips and Desha——
A. No I never had any dealings in—in Desha county.
Q. In Monroe county?
A. Monroe county, yes, sir.
Q. There are approximately eighteen thousand five hundred acres of land belonging to the White River Lumber Company in Arkansas county, and approximately twelve thousand five hundred in Desha county, approximately sixty-five hundred in Phillips county and approximately four thousand in Monroe county; are you familiar with those lands, Mr. Dennison?

A. I am not familiar with any of the lands in Desha county, and very little of it in Phillips county.

Q. You are familiar with those in Arkansas county and Monroe county?

A. Arkansas and Monroe county.

A. Arkansas and Monroe county?

A. Yes, sir.

Q. Do you know the value of those lands?

A. Well, I know I have been on those lands a whole lot and I have bought lands adjoining those, and have logged in there and I have sold logs in there for the last eight or nine years—seven, eight or nine years.

Q. Well, do you know the values of the lands?

A. Well, I bought some land for twenty-five to thirty [fol. 50] dollars an acre in there a few years ago; I think those lands were as good as that, and some of the White River land is very little better than what I——

Q. But do you know the values—or do you not know the values of those lands?

A. Yes, sir.

Mr. Buzbee: Let him say, himself.

A. I know what those lands would sell for in the last four, five or six years. Now, they own a piece in Big Island Chute, known as—what we call Big Island there in Arkansas county; that is a very valuable tract, I think the best piece of timber land in the whole country; I think there is somewhere around seventy-two hundred acres that they own on that island.

Q. What is that land worth?

A. Well, that land's worth sixty-five dollars an acre. I would be glad to buy it at sixty-five.

Q. Is there any other of this land that is worth that much?

A. Yes, they got some just west of Big Island Chute, on the Chute in Arkansas county—I say now five hundred acres, I don't remember—don't know just exactly how many acres are there, but around five or six hundred, as good——

Q. Just as good as the Big Island land?

A. Yes, sir.

Q. Did you say you would be willing to pay sixty-five dollars an acre for the seventy-two hundred acre tract?

A. Yes, sir.

Q. And the five hundred acres?

[fol. 51] A. Yes—they have cut some on there. Yes, sir, taking out what they have cut over, I could handle that at sixty-five dollars an acre.

Q. Would you make that offer?

A. Yes, sir.

Q. Now, at sixty-five dollars an acre?

A. Yes, sir.

Q. For the seventy-two hundred acres and the five hundred acres?

A. Less what they have cut; they have cut some this year on that land.

Q. Less what they have cut in the last two or three months?

A. Yes, sir.

Q. You would make that proposition, would you?

A. Yes, sir.

Q. What do you base your estimate of values on, Mr. Dennison?

A. Well, they have got—on that land they have got about fifty-five hundred feet of commercially good timber per acre on there.

Q. Fifty-five hundred feet?

A. Yes, sir.

Q. To the acre?

A. To the acre.

Q. It will average that?

A. Yes, the seventy-two hundred acres, I think will.

[fol. 52] Q. The seventy-two hundred and the five hundred acres?

A. The five hundred acres something like that.

Q. Have you bought any land on Big Island in the last few years?

A. I bought a hundred and seventeen acres on Big Island last year.

Q. How many have you cut?

A. I have cut practically all of it off. I cut about eight thousand feet per acre. I got just a little over nine hundred thousand feet off the hundred and seventeen acres.

Q. You averaged over eight thousand feet to the acre?

A. Yes, sir.

Q. You don't think the White River Lumber Company lands would average that much?

A. No, sir; I don't think it as a whole would, that much—no, sir, I don't think so.

Q. Some of it would be that much, and some less?

A. Yes, some would be a good deal less.

Q. And what do you say it will average?

A. I think it will average fifty-five hundred—five thousand five hundred feet per acre.

Q. You have been over this land, have you not?

A. Lots of times, yes, sir.

Q. When was the last time you were over it?

A. I was over it last winter, less than a year ago. Now, I logged there adjoining it and I went through it.

Q. Who did you sell your logs to?

A. Southwestern Veneer Company.

[fol. 53] Q. And you got how much for them?

A. I got twenty dollars and fifty cents a thousand for them on the banks—on the bank of the Chute.

Q. What did that cost you to log those?

A. It cost five dollars and fifty cents a thousand.

Q. Five dollars and fifty cents a thousand.

A. Yes, sir.

Q. That left a net profit of fifteen dollars a thousand?

A. Yes, sir.

Q. Was there any other expense connected with it?

A. Well, there was some little—there is always some overhead expense of logging always; some people pay more than others.

Q. Well, how much did that amount to?

A. I looked after it myself and I didn't have any hired labor, and it amounts to something—you got your gasoline and automobiles and so on——

Q. What did that run?

A. A dollar a thousand would cover that.

Q. A dollar a thousand.

A. A dollar a thousand.

Q. And that would leave fourteen dollars a thousand to you net on this land, Big Island, being the same island

on which the White River Lumber Company's seventy-two hundred acres are located?

A. Yes, sir.

Q. How far is that from it?

A. It adjoins it.

[fol. 54] Q. Well, it adjoins it?

A. Yes, sir.

Q. You say this is an island?

A. Yes, sir.

Q. What is it surrounds this island?

A. Well, the river——

Q. What river?

A. White river on the west bank—White river is on the east side and the White River Chute is on the west side of it.

Q. How do these lands of the White River Lumber Company lay, Mr. Dennison? Are they in separate tracts scattered throughout Arkansas county——

A. Well, they got a lot of lands adjoining, right in rotation, right in a body.

Q. Right in a body?

A. Right in a body.

Q. And how in reference to the river are they situated?

A. Well, the river runs right through there; their lands lay all in one township—it lays right north and south.

Q. Range 1 west?

A. In Range One West, all the land they own, I know anything about.

Q. And in reference to the descriptions, state what sections they are in?

A. Well, they begin in Three South One West and go on down to Seven South One West, way on down, I don't——

Q. Eight South One——

[fol. 55] A. Well, may be further on down. I don't know anything about their lower river properties.

Q. Well, now, how does the location on the river affect the value of the timber lands?

A. Well, the close the timber lands are to the river the more valuable they are, the less expensive to get them on the river bank.

Q. Does that make a considerable difference, or is it just a small amount?

A. Well, it makes considerable difference.

Q. In other words, timber lands which is fifteen or twenty miles off the river would be worth very little less, or would it——

A. It would be worth a whole lot less just a few miles back; you can't haul it; the cost runs up pretty sharp after you get over a mile.

Q. Is this land ideally situated for logging, or it is not?

A. Well, it is—it is very well situated for river transportation.

Q. Have you bought any other lands in that vicinity besides those you mentioned?

A. Yes, I bought a piece of land from Mr. Storthz here of Little Rock, and then I bought a piece of land from the Porters that live up in Michigan; and then I bought some more from a fellow that lived—some more people that live in Michigan, Lapeer, Michigan—I bought several pieces.

Q. The land you bought there, that was bought from W. P. Porter and wife?

[fol. 56] A. W. P. Porter and wife.

Q. What did you pay for that land?

A. Paid twenty-five dollars an acre.

Q. How many acres were there?

A. Twenty-eight hundred and fifty-six acres, I think.

Q. Approximately?

A. I think twenty-eight hundred and fifty-six.

Q. Twenty-eight hundred and fifty-six and thirteen hundredths acres?

A. That's it, yes, sir.

Q. I will hand you a certified copy of a warranty deed dated January 31, 1920, signed by W. P. Porter and Hattie J. Porter, to S. B. Dennison, H. F. Linder and J. M. Linder; can you identifly that deed (handing deed to witness)?

A. Yes, sir; that is that deed.

Q. You have examined that before, have you?

A. Yes, sir; I have got this deed at home, the original.

Q. Does that give the correct description?

A. Yes, sir.

Q. And the correct consideration——

A. Yes, sir.

Q. —for the land?

A. I haven't read over this, but I imagine it is.

Q. Now look at the consideration and see if that is——

A. Yes, sir.

Q. How much is it?

A. I gave him—I paid him thirty-six thousand dollars [fol. 57] cash, and I gave him a note for thirty-five thousand four hundred and two dollars and sixty-five cents—made a total of Seventy-one thousand four hundred and two dollars and sixty-five cents.

Q. Has all that amount been paid?

A. Yes, sir, it is all paid.

Q. Was that——

Mr. Buzbee: Let me see that. Are you introducing it?

Mr. Rose: Yes.

Q. Will you *mame* that an exhibit to your deposition?

A. Yes, sir. Yes sir, that's a correct deed to that.

(Said document above referred to was, by the Reporter, marked "Exhibit A to S. B. Dennison, WWP, 3-6-26" is hereto attached and made part hereof.)

Q. You are in the business of buying timber for profit, are you?

A. Yes, sir.

Q. Did you consider that the fair market value, or did you consider it more or less than the land was worth, when you bought it?

A. Well, I went and looked at the piece of timber and that was his price; he made me that price and I paid it.

Q. Well, what was the fair market value of that land, do you know?

A. Well, I don't know whether—that is the price that he asked for it and I bought it—my partner and me, we bought it at that price, at twenty five dollars per acre. He didn't ask any more than that.

[fol. 58] Q. I know. But you know what the land was worth?

A. Well, I made some money on it.

Q. How much did you make on it.

A. Well, I made a good deal of money on it.

Q. How much did you make? A hundred thousand dollars?

A. Yes, I guess we made a hundred thousand dollars.

Q. On that twenty-eight——
A. Twenty-eight hundred and fifty-six acres.
Q. And how long——

Mr. Buzbee: Now, John, I—of course, this is all subject to exceptions, I guess, but you ought to let him tell what he did with it.

Mr. Rose: What did you do with the land?

Mr. Buzbee: You are doing all the testifying so far. It is sort of laying——

Mr. Rose: No, I didn't mean to do that.

Q. State in your own way——
A. We logged it.
Q. What?
A. We logged it, we cut the logs and sold the logs.
Q. What did you do with them?
A. Do with the logs?
Q. Yes.
A. Well, we sold some logs to the Chicago Mill & Lumber Company, a whole lot of them, I expect about four or five million feet, I don't remember. A whole lot of them we sold to the Dooley Lumber Company; we sold the Kennedy Manufacturing Company a lot of logs off of that, and sold Galloway-Kennedy a lot of logs; sold the Magnolia Box Company at Hickman a lot of logs.

[fol. 59] Q. Hickman, Kentucky?

A. Hickman, Kentucky. We sold the Breece-White Lumber Company at Arkansas City a lot of logs off of that. Of course we sold lots more—we sold Shannon Brothers a lot of logs off of that.

Q. How many feet to the acre did that tract average, Mr. Dennison, how many thousand feet?

A. Well, we cut about seven thousand feet. Now, there's lots of timber on it yet.

Q. Then you sold these logs at from twelve to thirty dollars a thousand, is that right?

A. Well, I sold some for fifty-five, but just a small bunch.

Q. Fifty-five dollars a thousand?

A. Yes, sir.

Q. Well, what were these logs, and what would be the average price you received for them?

A. Well, about twenty dollars a thousand.

Q. About twenty dollars a thousand?

A. Yes, sir.

Q. What did it cost you to handle them?

A. Well, I paid five dollars for cutting some, and I paid as high as ten for some I cut.

Q. What did it average for the entire lot?

A. Well, it averaged about six dollars.

Q. Six dollars?

A. Yes, sir; I paid five dollars for the most.

[fol. 60] Q. Then you made fourteen dollars a thousand net?

A. Yes, sir; something like that.

Q. And you say there were about how many million feet?

A. Well, there are several million feet—four or five million feet of logs left.

Q. How much have you made to date on that?

A. Well, now, I just don't know just right off what our profit has been on that, but we have been operating there six years and I guess our profit has run ninety or a hundred thousand dollars.

Q. Have you bought any other lands—First I will ask you how this land compares with the lands of the White River Lumber Company in question?

A. The White River Lumber Company owns a lot of land adjoining this Porter tract of land.

Q. How is the timber on it compared with the land you bought?

A. Well, I think it runs something like this land.

Q. About the same?

A. Yes. Now, they have cut their timber off of this land adjoining this since 1920; they have done lots of logging in there, right in this particular neighborhood.

Q. Have they cut it all off since then?

A. No, all they cut had been cut since 1920 in that neighborhood.

Q. And how did your land compare with that land before this timber was cut?

A. Well, I expect it would all run about the same in [fol. 61] there. They had a lot of land that didn't have anything on it, and they had a lot of land that had good

timber on it. They got some in there that's not been cut yet that's pretty good timber.

Q. What was their land worth before this timber was cut off from 1920 on?

A. Well, it was worth twenty-five to thirty dollars a thousand anyway.

Q. How much?

A. Twenty-five to thirty dollars. A fellow could have given twenty-five to thirty dollars a thousand and made money on it.

Q. A thousand?

A. An acre. An acre.

Q. They could have given twenty-five to thirty dollars an acre and made money on it?

A. Yes, sir.

Q. At the rate you made on it?

A. Yes, sir.

Q. Have you bought any other lands?

A. I bought a piece of land from Mr. Storthz up above there.

Q. I hand you a timber deed, that is, a certified copy of a timber deed, dated December 22, 1922, signed by L. Storthz, deeding to Sam Dennison seventeen hundred acres of land in Arkansas county. Can you identify that deed (handling document to the witness)?

A. Yes, sir; I have that original deed here in my pocket.

Q. That is a copy of the original, is it?

[fol. 62] A. Yes, sir, I checked up on this price. I think it is.

Mr. Buzbee: Let me see it, will you please?

(Witness hands deed to Mr. Buzbee.)

A. I have that original deed, I have it here. I paid Mr. Storthz for a little more—(Addressing the reporter:) You needn't put that in the testimony. Here's the original deed from Storthz; I know that is certified there. I paid him fifty-one thousand dollars for approximately seventeen hundred acres.

Q. How much per acre?

A. Thirty dollars.

Q. Where is that land located?

A. That land is up on the White River—in Township Three South, Two West.

Q. How is that located in reference to the White River Lumber Company's?

A. Well, they own land on the east side of this piece of land.

Q. Touching it?

A. Yes. Then they—on the other—on across the river, over on the east side, in Arkansas county, they own land. Now, all that land has been cut over by the White River Lumber Company.

Q. Does this deed recite the correct consideration for that land?

A. Yes, sir.

Q. That amount, fifty-one thousand dollars.

[fol. 63] A. Yes, sir.

Q. Has that been paid?

A. It has every bit been paid. There is not quite that many acres; I paid him thirty dollars an acre and he had it in his mind there were seventeen hundred acres, but there was just sixteen hundred and eight some—eight—and he is to pay me back. He hasn't yet, but will.

Q. Now, what is—do you know the value of that land at the time you bought it?

A. Well, I——

Q. What did he ask you for that land?

A. Well, at one time he asked me fifty dollars an acre for it.

Q. When was that?

A. Along early in 1922, but I got hold of that land by waiting. I made some money, but I didn't make any money to holler about on that piece of land.

Q. You did make some money?

A. We made some money, but no big lot of money.

Q. Not as much as you did on the other land?

A. No, sir. At the time I bought that land I paid all it was worth.

Q. And now, with reference to its value, does that land compare with the value of the White River Lumber Company land, except the Big Island and the five hundred acres?

[fol. 64] A. Well, that land—they own some land right next to the river, between this land and the river, that they cut a lot of timber off of, I don't know how much, but they done a lot of logging in there. I expect it would run about like that land.

Q. About the same value as this land?

A. Yes. See, when you get close to the river you get better timber and more timber to the acre on the ridge next to the river than if you get away from the river.

Q. Now, that comparison doesn't refer to the Big Island tract?

A. No, sir. Big Island is an exceptionally fine body of timber; best that's ever been known.

Q. What kind of timber is on these various tracts of land?

A. Well, that Big Island, there would be seventy-five per cent of it gum.

Q. What is the rest of it?

A. Well, its oak and miscellaneous stuff—some cypress. But oak would be fifteen to twenty per cent and the other would be——

Q. Would the cost of handling these logs be about the same as the cost you paid for handling yours?

A. Just about, yes, sir; they pay around five dollars and six dollars a thousand to get that out.

Q. How does the value of the timber compare with yours?

A. Well, it runs about the same; all in that section of the country, the timber is about the same.

Q. Now, in the year 1922, when you bought this land from——this timber land from Mr. Storthz, what was the [fol. 65] condition of the market then, was timber high or low?

A. It was low.

Q. How much less than it is now?

A. Well, it was almost forty to fifty per cent lower than it is now. Now, at least fifty per cent what I got for those logs and what you can sell logs for today. I sold those logs at a net to me of seventeen dollars and twenty-five cents F. O. B. river bank. Now I deliver them on cars free, but I sold them delivered on board cars at De Vall's Bluff and I got twenty-four dollars and fifty cents a thousand.

Q. You got forty to fifty per cent less than you would get now?

A. Less than I would get now.

Q. How did the values when you bought that seventeen hundred acre tract compare with the values from the year 1915 to the year 1924?

A. Well, the first logs that I ever sold was in 1917, I think—maybe the Fall of 1917, and I sold them for twelve dollars; and I sold logs at twelve dollars on up for maybe a year. In 1919 I got eighteen dollars for logs; then the latter part of 1919 I got, maybe twenty dollars and twenty-two—that is, for gum logs. Now, oak logs have always been, until now, a few dollars higher than gum, but right now gum is the highest.

Q. What was the average value of these logs?

A. For that period of time? Well, I think about twenty [fol. 66] dollars.

Q. Twenty dollars?

A. Yes, sir, they would average during the last seven or eight years.

Q. You make the certified copy of the deed from Mr. Storthz to you an exhibit to your deposition, do you?

A. Yes, sir. That was—that is the correct amount of money, just like I told you there.

Mr. Rose: That's all right.

Mr. Buzbee: He can tell what he knows about it.

(Said deed above referred to was, by the reporter, marked "Exhibit B to S. B. Dennison, W. W. P., 3-6-26" is hereto attached and made part hereof.)

Q. Mr. Dennison, are you familiar with the sale of timber lands aggregating fifty-three hundred and forty-eight acres in Monroe, Phillips and Arkansas county, the sale being made by J. T. Wylie, of Saginaw, Michigan, to S. M. Bush, of Cotton Plant?

A. Yes, sir, I work that trade up. That trade was made to Mr. Wylie and me and I transferred it to Bush and I made a commission—they paid me a commission.

Q. What sections and what townships were these lands in?

A. Well, some of them were in Four South, One West—I don't think there is any in Three—and some of them in

Four South, One East. I think it was all in Four South, One West, and——

Q. You handled that deal yourself?

A. Yes, sir; I handled that deal, myself.

Q. What was the consideration per acre?

A. Forty-five dollars an acre.

[fol. 67] Q. Forty-five dollars an acre?

A. Yes, sir.

Mr. Buzbee: Do you want to introduce that?

Mr. Rose: Yess, will you make that an exhibit to your testimony? Have you seen the deed?

Mr. Buzbee: It's a certified copy.

A. Yes, sir; I have seen the original deed; this is a copy of it. Yes, I will make it an exhibit. I know they paid——

Mr. Rose: It is agreed that the certified copy of this deed may be admitted in evidence——

Mr. Buzbee: As Exhibit——

Mr. Rose: —C. to Mr. Dennison's testimony.

Q. What was the total consideration paid? Does the deed recite the total consideration?

A. Yes, sir, the total amount of money was two hundred and forty thousand six hundred and sixty dollars—there might be some few cents. I had that deal made myself, but I couldn't finance it and I turned it to Mr. Bush. They paid me a commission.

(Said deed above referred to was, by the reporter, marked "Exhibit C to S. B. Dennison, W. W. P., 3-6-26", is hereto attached and made part hereof.)

Q. When was that sale made Mr. Dennison?

A. Well, that sale—I don't know just what date it was closed, but——

Q. It was May 24th, 1924.

A. That trade was started in about 1922 and finally resulted in the transfer of that land on that date; they were [fol. 68] two years making that trade.

Q. You have said that the value of land then was about forty to fifty per cent lower than now?

Mr. Buzbee: No, he didn't say that.

A. No, I said logs, between the Summer—that is, the Summer time of 1922 and right now. You can sell logs, I understand, right now, is exceptional time—there is a good demand for logs right now that we don't often have.

Q. Well, what was the value as disclosed in that deed—how do those values compare with the values over the ten year period from 1915 to 1924?

A. Now, that piece of land there sold in 1919—I handled that deal, too, got a commission out of it—sold it to Wylie from T. T. and H. B. Bateman—I think it was in 1919 they paid me a commission—I sold it to Wylie for twenty-five dollars an acre.

Q. That was in what year?

A. I think it was in 1919. I am pretty sure it was.

Q. Are you familiar with the number of feet to the acre that has been cut from that land?

A. On this land?

Q. Yes.

A. Well, I have got—now, understand, my commission on that—out of that land's so much per thousand. So, now they paid me to cut in there and we have cut on that six hundred acres and we have cut close to four million feet now.

[fol. 69] Q. How many feet to the acre did that make?

A. Well, that would make—let's see, nearly seven thousand; sixty-five hundred, something like that.

Q. How does that land compare with the White River Lumber Company's land, exclusive of the Big Island and the five hundred acre tract referred to?

A. Well, they own—the White River Lumber Company owns land adjoining this land all around in that county, maybe, and one piece down in Monroe county that they don't own there, a three hundred acre tract; they own some adjoining that in Phillips county, and one corner, I think, in Monroe county adjoining this in Three One.

Q. When was that cut?

A. Well, that was cut in 1918, 1919 and 1920, along in there.

Q. Before that was cut, how did the values of the White River Lumber Company land compare with the values of these lands?

A. Well, I expect it run along about like that land.

Q. About the same?

A. All in that section, yes, sir.

Q. What did that timber consist of, what kind of timber?

A. Well, this timber that we have cut on, this three and a half to four million feet of timber, ourselves, it has been running eighty per cent gum.

Q. Eighty per cent gum?

A. Yes, sir.

Q. How much does it cost to handle that?

A. Well, we paid on this—I have let a contract on that [fol. 70] —we paid in the early summer—last summer and Fall we paid five dollars per thousand to put it on the bank, and after the rain started we raised that to seven. This has been an unusually hard Fall to log and there has been no logging done and logs have been scarce and people have run the market up unusually high at this particular time to what we ordinarily have.

Q. You then have to pay for the expenses of logging?

A. Yes, and this price of logs—people who are in the market are offering more money than they usually do right now; on account of the high water there has been no logs got out—people are out of logs.

Mr. Buzbee: You sold this land to Mr. Bush for forty-five dollars an acre?

A. Yes, sir, forty five dollars per acre. The deed recites that.

Q. Has that consideration been paid?

A. No, sir; no, the notes just recite they're—they're to pay when they get it. It says they gave fifty thousand dollar notes—there is five notes.

Mr. Buzbee: That all appears here (indicating deed)?

A. It all appears on that deed. It is not to be paid—I think it goes up until 1929.

Q. Those notes bear interest?

A. Six per cent, yes, sir; they're paid semi-annually.

Q. Mr. Dennison, which is the more valuable, a tract of ——lot of tracts of timberland separate, or one big body?

A. One big body.

Q. Does it make a considerable difference in the value?
[fol. 71] A. Well, it makes some difference, yes, sir. It is easier to get to and you don't have to stray around.

Q. How is the White River Lumber Company's land?

A. Well, they got some land—lots of land in a body, and they got some scattered lands.

Q. But most of it in a body?

A. Yes, most of it is in a body—most in Arkansas county and Monroe county. Now, I am not so familiar with their Desha, and not much with their Phillips county land.

Q. Have you been over the Phillips county land?

A. Well, not much, I wouldn't want to say what those lands are worth; I haven't been over them. I have been over some portions of them adjoining this land down there, but I am not——

Q. Well, those you have been over, how do they compare with these?

A. Well, I just said that the Monroe county land there and that wild land is very slow to sell, timberland.

Q. But the Phillips county land that you have been over, how does that compare?

A. Well, they have more than a few hundred acres. I have been over a few hundred acres there, but I don't know enough about that. Now, I understand further down the river less timber is standing—I understand there is not much timber on way down there.

Q. But you don't know about that?

A. No, I don't know.

[fol. 72] Q. Well, that's all right, you needn't testify about it. I believe that is all, Mr. Dennison.

Cross-examination.

Questions by Mr. Buzbee:

Q. Mr. Dennison, you have got your ideas of values of lands from transactions in which you have purchased or sold lands, have you?

A. Yes, sir; that's exactly what I base my ideas on.

Q. Have you dealt in lands as a timber man or as an agent in buying and selling?

A. Well, I have dealt as a—bought for myself, and I have my partners that live in Memphis, and we have bought these tracts together that I have mentioned here.

Q. Well, now, those have been bought by you for logging purposes?

A. Yes, sir.

Q. Have they?

A. Absolutely, yes, sir; I have logged them.

Q. You stated—or, testified to the purchase of one hundred and seventeen acres on Big Island. I don't believe you said who you bought that from?

A. I bought it from J. A. Price.

Q. Where does Mr. Price live?

A. He lives at Ethel, Arkansas.

Q. How much did you pay for that?

A. I paid him twenty-seven hundred and fifty dollars. Now, I want to say here that deed wasn't made to me. I [fol. 73] borrowed the money from Mr. S. M. Bush and the deed was made to him; but I handled it and I took him and I sold him later, just like I said.

Q. How much was that an acre?

A. Well, there were a hundred and seventeen acres; about twenty-five dollars an acre, right around that.

Q. When was that purchased?

A. That was purchased sometime in September—October, 1924.

Q. Now, isn't it a fact that in 1919 and 1920, immediately after the war, there was a great revival of building, and that prices on logs and lumber advanced considerably?

A. Yes, sir; logs went up until the Spring of 1920. After early Summer you couldn't hardly sell a log in 1920, you couldn't—I had some contracts that I had made early in 1920 for Fall delivery, and I canceled some of them.

Q. It is true, though, that the price of logs, and consequently the price of timber and lands, has varied considerably along in this period, depending on the demand——

A. Yes, sir.

Q. —for lumber?

A. Yes, sir, some years you would get more, some years you would get less for logs.

Q. Isn't it also true, Mr. Dennison, that the cost of logging in that country varies a great deal, depending on the

seasons and the overflow or lack of overflow from White River?

A. Yes; you get logs hauled some dry seasons cheaper than you do in rainy seasons.

[fol. 74] Q. These lands about which you have testified, and covered by these deeds, introduces as exhibits to your depositions, are situated, as I understand, along contiguous to or near the White River Lumber Company lands?

A. Yes, sir.

Q. They are all located in the same territory and are practically the same character of lands?

A. Yes, sir, that is a fact.

Q. Are these lands subject to overflow from White River?

A. Yes, sir, they are; all the lands we spoke of are all subject to overflow.

Q. How much of the time in the last few years have these lands been under water?

A. Well, these—its been under water from four to six months a year every year we have—last year we had a little less than that, but some years we had a little more. But we figure on having about six months logging term down there each year, about that.

Q. Are these sales about which you have testified the principal sales you have known about over there?

A. How was that?

Q. These sales of lands, about which you have testified, are they the principal sales that you have know about?

A. Yes, sir, that is the principal sales. If there has been any other sales in there—now, the Magnolia people bought some lands from Mr. Storthz down in—some in the lower part of Arkansas county and Desha county, they bought [fol. 75] six, seven or eight thousand acres of timber from him in the last two or three years, three years ago.

Q. Do you still own the lands you purchased from Porter and Storthz?

A. I didn't buy the land from Storthz, I—No, sir, I don't own the Porter land, I sold my interest this past year in the Porter land.

Q. You said that you did not buy the land from Storthz?

A. Didn't buy the land. That is just a timber deed from Storths.

Q. Oh, yes.

A. Yes, sir.

Q. I see. I thought that was the land. Is this land worth anything outside of timber?

A. Well, I don't know, sir. I don't value the land worth anything after the timber is off of it. I don't value that land.

Q. In this deed from Storthz you agreed to pay the taxes on the land during the life——

A. Yes, sir.

Q. —of the agreement?

A. Yes, sir.

Q. How much is that land assessed for?

A. Well, the taxes—I can tell you how many dollars taxes I paid last year; there was four hundred and fifteen dollars. That is the price; I don't remember the separate pieces, but that is the taxes of last year.

Q. Four hundred and fifteen dollars on approximately [fol. 76] seventeen hundred acres of land?

A. On approximately seventeen hundred acres of land, yes, sir.

Q. Do you know what the assessment is?

A. No, sir, I don't.

Q. What is the assessment on the Porter land?

A. The taxes on the Porter land is about three hundred and sixty dollars a year, I paid that every year; there is twenty-eight hundred and fifty-six acres.

Q. You don't know what that assessment is?

A. No, sir, I don't know just what the assessment is.

Q. Do you know what the assessment is on the land conveyed from Wylie to Bush?

A. No, sir, I don't know. The taxes on it is twenty-two hundred and some dollars for the whole thing, I think, in a year—twenty-two or three hundred dollars. There is fifty-three hundred and forty-eight acres, that is approximately what is in that.

Mr. Buzbee: I believe that is all, Mr. Rose.

Questions by Mr. Rose:

Q. Mr. Dennison, Mr. Buzbee asked you about the hundred and seventeen acres which you bought in 1924.

A. Uh-huh.

Q. You said you paid twenty-five dollars an acre?

A. Well, now, I paid twenty-seven hundred and fifty dollars for that. I went to this fellow that owned it, a farmer down there, and he asked me that much money and I bought it.

[fol. 77] Q. You bought the timber on the land?

A. Yes, sir.

Q. To make money out of it?

A. Yes, sir.

Q. Did you make money out of it?

A. Yes, sir.

Q. How much did you make?

Mr. Buzbee: He has already gone over that in detail. I didn't ask him about——

A. I don't know just what I made on it, but I made some money on it.

Q. Well, Mr. Dennison, how did that—you told about the overflow to these lands; you bought with that in view, knowing that the lands overflowed?

A. Yes, sir.

Q. You took that into consideration——

A. I knew that.

Q. —when you bought?

A. Yes, sir. I didn't buy them for any benefits out of the lands after the timber was off of them.

Q. Are you familiar with the sale made by the Ayer-Lord Tie Company to the Fisher Body people?

A. I don't know as to what deal has been made, I wouldn't know enough to say. I know their people and the Fisher Body Company have——

Q. Didn't you tell me that they had sold their land in addition to the timber for five dollars an acre?

A. Yes, that tract they're to get——

[fol. 78] Mr. Buzbee: Well, now, that is——

Mr. Rose: This is re-direct.

Mr. Buzbee: Well, I know, but he is just testifying from hearsay.

A. Yes, I don't know any of that to be so, I have just talked to a few people.

Mr. Buzbee: He knows enough. Don't go to guessing.

Q. I just wanted to show this lands worth something. On these lands the timber has been worth as much other years as it has been worth the last two years, has it not?

A. Well, yes, two years ago, yes. The lands, well—I wouldn't say early in—before the war started.

Q. But since the war?

A. Since the war? Now right after 1920 there wasn't anybody that was figuring on buying any land—there wasn't anybody to talk about buying lands or logs.

Q. But then other years?

A. Well, in 1922 the market opened up a little; some demand, but not at a high price.

Q. How about 1919?

A. 1919 was a mighty good year; good demand.

Q. Good as 1924?

A. 1924? yes, sir. But 1919 was the best year we had.

Q. And the prices weren't quite as high as they were making their demand; there was a good demand.

A. ——.

Q. How did the prices compare——

A. Well, logs went up in 1919.

[fol. 79] Q. How did they compare with 1924?

A. Well, they were better than they were in 1924. 1924 we didn't have such a good market; in 1924 or 1925 we didn't have any good demand for logs until——

Q. But the prices?

A. —September. The prices weren't much until September, 1925.

Mr. Rose: That is all.

Mr. Buzbee: That is all.

(Signature waived.)

[fol. 80] C. H. KIRKPATRICK, of lawful age, being first duly sworn on oath to testify the truth, the whole truth, and nothing but the truth in behalf of the plaintiff, testified as follows:

Direct examination.

Questions by Mr. Rose:

Q. Your name is C. H. Kirkpatrick?
A. Yes, sir.
Q. Where do you live, Mr. Kirkpatrick?
A. St. Charles, Arkansas.
Q. In Arkansas county?
A. In Arkansas County.
Q. How long have you lived there?
A. Practically all my life.
Q. What age man are you?
A. I am forty-four.
Q. Thirty-four?
A. Forty-four.
Q. What business are you in there?
A. Well, first one thing and another. I have been working in timber some, and at the present time I am working for Mr. Wylie of Saginaw, Michigan.
Q. Are you familiar with the timber and timberlands in Arkansas county and the surrounding country?
A. Well, yes, sir, fairly so, I——
Q. Have you ever cruised any of that timber?
A. I helped cruise it, yes, sir.
Q. You helped cruise it?
A. Yes, sir.
[fol. 81] Q. Are you familiar with the White River Lumber Company's lands over there?
A. I think I am, the most of it, yes, sir.
Q. Have you been over it?
A. Yes, sir, I been over——
Q. How many times have you been over it?
A. Oh, that would be hard to say, how many times I have been over it. I have been over the Monroe county and Arkansas county tracts of land more than the rest.
Q. Approximately how many?

A. Well, I guess—I guess I go over that two or three times a year.

Q. Two or three times a year for the last ten years?

A. Yes, for the last fifteen years. I hunted quite a bit on it, and been over it—of course, a man hunting walks along all over.

Q. Do you know how to estimate the timber, the amount of timber on a tract of land?

A. Well, I have a pretty good idea about it.

Q. You have cruised lumber?

A. Yes, sir.

Q. Timber, rather?

A. Yes, sir.

Q. Mr. Kirkpatrick, what are these lands of the White River Lumber Company worth, the timberlands?

A. Well, all I could go by would be hearsay about what has been offered to them. But I have a good idea about what amount of timber is on them.

[fol. 82] Q. How much timber is there on them?

A. Well, the best part of their land, which is located on Big Island, my estimate of that would be around fifty-five to sixty hundred feet.

Q. From fifty-five hundred to six thousand feet an acre?

A. Yes, sir, and the upper end of Big Island is a great bit better than the lower end.

Q. The lower end is where the White River Lumber Company's lands are located——

A. No. No, they own practically all of Big Island, that is, the biggest portion of it.

Q. Now, your estimate, is that the average——

A. That's the average.

Q. —of the White River Lumber Company land?

A. No, the upper land on the upper end of the island is much better than that.

Q. How much is it?

A. I say, its much better.

Q. How many feet to the acre?

A. I expect there is acres on the upper end there will cut twenty-five thousand feet to the acre.

Q. But the average would be from fifty-five to sixty hundred?

A. Yes, sir.

Q. What kind of timber is on that land?

A. Well, there is gum, cypress and ash.

Q. What per cent of each?

A. I imagine around eighty per cent of gum, fifteen per cent of oak, balance ash and cypress.

Q. You are familiar with the logging expense in that [fol. 83] country, I suppose—or, are you?

A. Well, yes, I think I am.

Q. What is the expense of logging lumber in there?

A. It depends on the distance. Now, you go back—when you get back from the river, after you pass two or three miles its rather expensive. But up to a couple of miles I imagine a man could haul it for around six dollars—five or six dollars, that is a fair pay.

Q. Five to six dollars a thousand feet?

A. Five and a half to six and a half.

Q. A thousand feet?

A. Yes, sir.

Q. How is the White River Lumber Company land situated in regard to the river?

A. Well, they have river front practically on all of it, river front and bayou front, which is navigable from steamboats to barges. Now, over in little Esse's Bayou, that's a bayou that comes out of White River, and they boat and barge timber out of there, its navigable, that's open.

Q. What have logs been selling for in that country the last ten years?

A. I am not familiar with the price of logs, Mr. Rose, I haven't sold any.

Q. You don't know?

A. But I imagine—I imagine from what I hear them say they get around twenty to twenty-five dollars.

[fol. 84] Mr. Buzbee: Well, that is—he said he doesn't know.

A. No, I don't know.

Mr. Rose: No, I will not ask that any more.

The Witness: No, I haven't sold any.

Q. Now, what elements enter into the value of timberlands that way, Mr.——

Mr. Buzbee: Well, he said he doesn't know.

Mr. Rose: No, he said he felt like he could tell what elements entered into the values of them.

Q. Does the river—or, the fact that they are in large bodies, do those things——

A. Yes, they enter into it, its a big help to drag a line over it, all to be together, for the fact that there is less moving on the tracts and less——

Q. Well, how are the White River Lumber Company's lands in regard to that?

A. Well, their land lays in a pretty good body. It lays along—it has a long river front, practically all of it has a river front, or Chute or bayou. Now, there is Big Island Chute, that's navigable clear through, which is about twenty miles long, and the average width of the island is about two miles, I think, which would throw them to haul a mile there either out in the river or a mile from the Chute back to the center, and to get all that would be five dollars to five dollars and a half.

Q. Now, you have estimated the timber on Big Island—the White River Lumber Company has about eighteen thousand five hundred acres in Arkansas county, and about four [fol. 85] thousand in Monroe county, and what is the average value—or, if you don't know the value, what amount of stumpage is there on this other land, exclusive of the Big Island tract?

A. Well, there is a piece—I don't know just how many acres, but I know they got some land between Big Island and the hills; there's a bottom in there between Big Island and the hills. That is—well, I guess it is about the same as on Big Island.

Q. Just as good as Big Island.

A. Yes.

Q. Approximately how many acres are on that?

A. Well, I guess there is three hundred acres, or more.

Q. What would it cost—would it cost about the same, or more or less, to log that?

A. It wouldn't cost any more, because it is not—it is not over half a mile wide, that strip of their land.

Q. Now, outside of the Big Island tract and this three hundred acres or more tract which you have testified about,

what amount of stumpage, how many thousand feet to the acre, could you get off the rest of that land?

A. Well, there is one tract that they got that I seen the average on it was a little better than forty-nine hundred feet to the acre; while they didn't cut it clean there was some left on it.

Q. Where was that located?

A. That was in four one, I believe.

Q. Four South, One West?

A. Yes, sir.

Q. What county is that in, Monroe——

[fol. 86] A. Yes, sir.

Q. —Or Arkansas?

A. Monroe.

Q. In Monroe county. You say you saw the figures. Where did you see the figures?

A. I seen Mr. Keaton with the books.

Q. Who is Mr. Keaton?

Mr. Buzbee: Now are you going to have him? He can't go right back and testify to that.

The Witness: Well, I went to him to get——

Mr. Buzbee: He just testified here they had some books.

The Witness: He showed me—he says "Here's a lot."

Mr. Rose: Well, you can't testify as to that. What would be your estimate on the value—on the amount of stumpage on that entire land, outside of the Big Island and the other tract that you referred to?

A. Well, the Monroe county land that they got isn't quite as good as the Big Island, I don't think it will average quite as good.

Q. What will it average?

A. It will probably average four thousand feet or forty-five hundred.

Q. That is four thousand feet to the acre?

A. Yes; probably forty-five.

Q. And how about the balance of the land in Arkansas county?

[fol. 87] A. Well, now, they got some land on down below this Big Island tract in Arkansas county, it will go about like Monroe county.

Q. About four thousand to the acre?

A. Yes, about forty-five hundred feet.

Q. And what is that land worth, exclusive of the timber?

A. Well, I don't know of any of it being sold, Mr. Rose. I don't know what the value would be on the land after the timber was taken off.

Q. And the Phillips county land, have you seen that land?

A. Yes, sir.

Q. What would be the stumpage on that land?

A. Well, its about the same.

Q. About the same. Have you seen the Desha county land?

A. Yes, but I haven't been on that land since—well, its been six years since——

Q. Six years ago?

A. Yes, sir.

Q. What would it have averaged six years ago?

A. Well, we cut about four to forty-five hundred feet—four thousand to forty-five hundred feet.

Q. To the acre?

A. Yes, sir, on some of it along down there near the Arkansas River.

Q. Now, what would be the expense of logging that?

A. Well, his furtherest haul on that job was about a mile and a half, and I think he paid the contractor six dollars——

[fol. 88] Mr. Buzbee: Now, he is——

A. —to put it on the bank.

Mr. Rose: Well, just testify to what you know.

Q. What is the expense of logging the Phillips county land?

A. Well, that wouldn't be over five dollars to five dollars and a half, because its right on the river bank, the Phillips county land.

Q. What kind of timber is it on these other lands?

A. About the same as——

Q. About the same as the Arkansas county?

A. Yes, sir, all the bottom land has about the same timber on it, gum, oak, cypress—but the biggest percentage is gum.

Q. Are these people—are the White River Lumber Company cutting that timber, now.

A. I understand they have cut——

Q. Well, do you know?

A. No, I dont know, I know they did cut some there this Winter on Big Island. I was there when they were cutting that; but this other——

Q. What were they doing with those logs?

A. I don't know; they were cutting them at the mill.

Q. What mill?

A. White River Lumber Company's mill at Clarendon, Arkansas.

Q. They have their own mill there at Clarendon?

A. Yes, sir, they have their own mill at Clarendon.

Q. Mr. Kirkpatrick, what is that Big Island land of the White River Lumber Company worth?

[fol. 89] A. Well, sir——

Mr. Buzbee: Well, if he knows; he said once he didn't know.

Mr. Rose: I don't think he said he didn't know. He said he didn't know the expense of certain logging.

Mr. Buzbee: No, he said first he didn't know what the value was.

Mr. Rose: Well, just state what you know.

Mr. Buzbee: Why let him go back and change that statement, and let——

Q. State what you do know, Mr. Kirkpatrick?

A. Well, Shannon Brothers told me that they would give seventy dollars an acre for the Big Island.

Mr. Buzbee: Well——

Q. Who are Shannon Brothers?

A. A lumber company at Helena, Arkansas.

Mr. Buzbee (laughing): That is good testimony.

Mr. Rose: I don't believe I know of anything else I want to bring out.

Cross Examination

Questions by Mr. Buzbee:

Q. Mr. Kirkpatrick, are you familiar—you have heard Mr. Dennison's testimony in reference to the sales of the

Porter, Storthz and Wylie tracts of land; are you familiar with those tracts?

A. I am with the Wylie tract, yes, sir, I look after it.

Q. Are you familiar with the Porter and Storthz tracts of land?

A. I have been over them several times, yes, sir.

Q. Are they about the same character as the White River [fol. 90] Lumber Company land?

A. I don't think there is but very little difference in them.

Mr. Buzbee: I think that is all.

Mr. Rose: That is all. Will you waive all formalities of taking, transcribing and transmitting, and the signatures?

Mr. Buzbee: Yes.

(Signature waived.)

STATE OF ARKANSAS,
County of Pulaski, ss:

I, Walter Powell, a Notary Public, within and for the County of Pulaski and State of Arkansas, duly commissioned, qualified and acting, do hereby certify that pursuant to agreement between the representative counsel herein appearing there came before me at the law offices of John M. Rose, Esqr., Home Insurance Building, in the City of Little Rock, Arkansas, the within named S. B. Dennison and C. H. Kirkpatrick, who were by me first duly sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid, that they were examined and their examinations reduced to typewriting, and that their respective signatures to their respective depositions were, by express agreement of counsel, waived, on the day, between the hours and at the place in that behalf first mentioned, and their said depositions are now herewith returned.

Given at my office in the City of Little Rock, County of Pulaski and State of Arkansas, this 11th day of March, 1926.

Walter Powell, Notary Public. My commission expires August 11, 1928. (Seal.)

Fees of Notary and Reporter, paid by Special Counsel for Plaintiff, $41.20.

[fol. 91] EXHIBIT "A"

To S. B. Dennison

W. W. P. 3-6-26

Deed with Lien and Relinquishment of Dower

Know all men by these presents: That we, W. P. Porter and Tattie J. Porter, his wife, for and in consideration of the sum of Seventy One Thousand Four Hundred Two and 65/100 Dollars, ($71,402.65) paid and to be paid by S. B. Dennison, H. F. Linder and J. M. Linder, as follows, to-wit: Thirty six thousand and no/100 ($36,000.00) dollars cash in hand (the receipt of which is hereby acknowledged) and one note of Thirty Five Thousand Four Hundred Two and 65/100 ($35,402.65) dollars dated January 7, 1920 and due and payable on or before September 1, 1920, and bearing interest at the rate of 6% per annum from date until paid do hereby grant, bargain and sell unto the said S. B. Dennison, H. F. Linder and J. M. Linder and unto their heirs and assigns, forever, the following lands, lying in the Southern District of — County of Arkansas and State of Arkansas, to-wit:

Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) of Section Twenty nine (29) Township Five (5) South of Range One (1) West; West one half (W½) of the Southwest quarter (SW¼) of Section Twenty-nine (29) Township Five (5) South of Range One (1) West; South one half (S½) of the Northeast Quarter (NE¼) of Section Thirty (30) Township Five (5) South of Range One (1) West; Southeast Quarter (SE¼) of Section Thirty (30) Township Five (5) South of Range One (1) West; Lots One (1) Two (2) Seven (7) and eight (8) of the Southwest Quarter (SW¼) of Section Thirty (30) Township [fol. 92] Five (5) South of Range One (1) West; Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Thirty One (31) Township Five (5) South of Range One (1) West; West One Half (W½) of the East one half (E½) of Section Thirty-one (31) Township Five (5) South of Range One (1) West; Lots One (1) Two (2) Three (3) Six (6) Seven (7) and Eight (8) of the Northwest Quarter

(NW¼) of Section Thirty-one (31) Township Five (5) South of Range One (1) West; Lots One (1) Two (2) Three (3) and Eight (8) of the Southwest Quarter (SW¼) of Section Thirty-one (31) Township Five (5) South of Range One (1) West;

North half (N½) and the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Thirty two (32) Township Five (5) South of Range One (1) West;

West one half (W½) of the Northwest Quarter (NW¼) of Section Thirty-three (33) Township Five (5) South of Range One (1) West; Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Thirty-three (33) Township Five (5) South of Range One (1) West;

Fractional West one half (Frl. W½) of Section Six (6) Township Six (6) South of Range One (1) West; East one half (E½) of the Southeast Quarter (SE¼) of Section Seven (7) Township Six (6) South of Range One (1) West;

West one half (W½) of section Seventeen (17) Township Six (6) South of Range One (1) West;

Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) of section eighteen (18) Township six (6) South of Range One (1) West;

[fol. 93] Fractional North one half (N½) of the Northeast quarter (NE¼) of section One (1) Township six (6) South of Range Two (2) West containing in the aggregate 2,856.13 acres.

To have and to hold the same unto the said S. B. Dennison, H. F. Linder and J. M. Linder, and unto their heirs and assigns, forever, with all appurtenances thereunto belonging. We covenant with said —— —— that we will warrant and defend the title to — said lands against all lawful claims whatsoever, of all persons whomsoever that have arisen or occurred since January 27 A. D. 1910, the date first parties acquired title. It being herein expressly understood that a lien is hereby retained upon said lands to secure the payment of residue of the purchase money hereinbefore mentioned.

And I, Hattie J. Porter, wife of the said W. P. Porter, for and in consideration of the said sum of money, do hereby release and relinquish unto the said S. B. Dennison, H. F.

Linder and J. M. Linder all my rights of dower and homestead in and to the said lands.

Witness our hands and seals, on this 31st day of January, 1920.

W. P. Porter. (Seal.) Hattie J. Porter. (Seal.)

Signed, sealed and delivered in presence of A. J. Suffern.

M. L.
Rev. $71.50 Cancelled.

[fol. 94] Acknowledgment

State of Michigan,
County of Charlevois, ss:

Be it remembered that on this day before me, the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting W. P. Porter to me well known as the grantor in the foregoing Deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me the said Hattie J. Porter, wife of the said W. P. Porter, to me well known and in the absence of her said husband declared that she had of her own free will executed said deed and signed and sealed the relinquishment of dower and homestead in the said deed for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public on this 31st day of January, 1920.

Andrew J. Suffern, Notary Public. My Commission expires July 28, 1920. (L. S.)

Filed for record 24 day of Feb. 1920, at 3 o'clock p. m. and duly recorded 16 day of Mch. 1920. Q. D. LaFargue, Clerk and Ex-Officio Recorder, by ——— ———, D. C.

[fol. 95] State of Arkansas,
County of Arkansas, ss:

I, Duce Pike, Circuit Clerk and Ex-Officio Recorder within and for the County and State aforesaid, do hereby certify that the annexed and foregoing pages of typewrit-

ten matter contain a true, correct and complete copy of the Deed of W. P. Porter and wife, Hattie J. Porter, to S. B. Dennison, H. F. Linder and J. M. Linder, dated January 31st, 1920, as the same appears of record in Record of Deeds, No. 22, at page 8, of the records of Arkansas county, Arkansas, Southern District thereof.

In witness Whereof, I have hereunto set my hand and affixed my official seal this the 4th day of February, 1926.

Duce Pike, Circuit Clerk and ex-Officio Recorder, by Ruth Lowe, D. C. (Seal.)

[fol. 96] EXHIBIT "B"

To S. B. Dennison

W. W. P. 306-26

Timber Deed

This indenture, made this the 22nd day of December, A. D. 1922, by and between L. Storthz (a single man) party of the first part, unto and with Sam Dennison of Stuttgart, Arkansas, party of the second part,

Witnesseth: That the party of the first part being the owner in fee simple, and in possession of the following lands, being situated in Arkansas county, Arkansas, to-wit:

All of fractional section Thirteen (13) the North half of Section Fourteen (14) and the Southeast Quarter (S. E. ¼) of Section Fourteen (14) the North half (N. ½) of the Northeast Quarter (N. E. ¼) of Section Twenty three (23) and the Southwest Quarter of the Northeast Quarter (N. E. ¼) of Section Twenty three (23) the North half (N. ½) of Section Twenty four (24) and the Southwest Quarter (S. W. ¼) of Section Twenty four (24) all in Township Three (3) South in Range Two (2) West, containing in the aggregate 1700 acres more or less.

For and in consideration of the sum of Fifty One Thousand Dollars ($51,000.00) Thirty Five Thousand Five Hundred Dollars ($35,500.00) cash in hand paid, receipt of which is hereby acknowledged, and one note of even date herewith in the sum of Fifteen Thousand Five Hundred

Dollars ($15,500.00) with interest at the rate of six per cent (6%) per annum from date until paid, the party of the first part has this day granted, bargained, sold and conveyed unto the said party of the second part and his lawful heirs and assigns forever, all the merchantable timber on [fol. 97] said lands and enough of the smaller timber for skid poles in removing said timber from said lands. It is distinctly agreed and understood that a lien is hereby retained on said timber until said note in the sum of Fifteen Thousand Five Hundred Dollars ($15,500.00) is paid in full, and that no timber is to be removed from any of said lands until said note is paid.

It is agreed that the party of the second part shall cut and remove said timber within a period of five years from this date, and shall be entitled to all of that time in which to cut and remove said timber. The said party of the second part shall have free uninterrupted possession of said land during the term of this indenture for the purposes herein set forth, and shall have free ingress and egress thereto and therefrom, with the right to build and operate trams and railroads on, to or across said lands for the purpose of transporting the timber therefrom, or for transportation of timber belonging to or that may belong to said party of the second part, and to this end shall be regarded as the holder of said lands, to sue for and recover the same from all persons whatever, holding or attempting to hold the same, provided, that the party of the first part, or his heirs or legal assigns, may retain such possession of said lands, at all times, as shall not interfere with the rights of the party of the second part under this deed for the purposes aforesaid.

It is further agreed that the party of the second part shall not have the right to enter any field on said land that is fenced or enclosed at the date hereof, without first ob- [fol. 98] taining the consent of the party of the first part.

It is further agreed that whenever said timber shall have been removed, the said party of the first part shall enter full possession of said lands at once, whether the time for such removal be expired or not, and grantee shall be released from further payment of taxes.

It is further agreed that said party of the second part shall pay all taxes and assessments levied against said

lands during the life of this indenture, except taxes for 1922, and that any failure by said party of the second part to pay such taxes and assessments by the third day before the time for such payment shall expire shall be authority to the party of the first part to pay same, for which he shall have a lien on any timber on said lands, as now by law given to agents and others paying taxes on the lands of others at their request.

And the party of the first part does hereby covenant with the party of the second part and his lawful heirs and assigns, that he will forever warrant and defend the title to said timber against the lawful claims of all persons whomsoever, except for taxes as hereinbefore mentioned.

In testimony whereof, the party of the first part hereunto set his hand on the day and year hereinbefore written.

L. Storthz.

$51.00 Rev. Can.

[fol. 99] Acknowledgment

STATE OF ARKANSAS,
County of Pulaski, ss:

Be it remembered that on this 22nd day of December, 1922, before me, the undersigned, a duly commissioned, qualified and acting Notary Public, within and for the County and State aforesaid, personally appeared L. Storthz (a single man) to me well known as the grantor in the foregoing indenture and known to me to be the same person whose name is signed thereto, and who acknowledged that he had signed the same for the consideration and purposes therein mentioned and set forth, and desired me to so certify, which is accordingly done.

Witness my hand and official seal on this the day and date above written.

James H. Hewitt, Notary Public. My commission expires Jan. 11, 1926. (Seal.)

Filed for record March 12th, 1923, at 9 o'clock A. M. and recorded March 15th, 1923. R. H. Allen, Circuit Clerk and ex-officio Recorder, by Albert Davis, D. C.

[fol. 100] STATE OF ARKANSAS,
County of Arkansas, ss:

I, Duce Pike, Circuit Clerk and Ex-Officio Recorder within and for the County and State aforesaid, do hereby certify that the annexed and foregoing pages of typewritten matter contain a true, correct and complete copy of the Timber Deed, from L. Storthz, a single man, to Sam Dennison, as the same appears of record in Record of Deeds and Mortgages X-5, at page 396, of the records of Arkansas county, Arkansas, Southern District thereof.

In Witness whereof, I have hereunto set my hand and affixed my official seal this the 4th day of February, 1926.

Duce Pike, Circuit Clerk and ex-Officio Recorder, by Ruth Lowe, D. C. (Seal.)

[fol. 101] EXHIBIT "C"

To S. B. Dennison

WWP 3-6-26

This indenture made by and between J. T. Wylie, of Saginaw, Michigan, hereafter called Vendor and S. H. Bush, of Cotton Plant, County of Woodruff, State of Arkansas, hereinafter called Vendee;

Witnesseth: That for and in consideration and subject to the terms, provisions and conditions herein set forth, the vendor does hereby grant, bargain, sell and convey unto the vendee and unto his heirs and assigns forever the following described lands situated in the counties of Monroe, Arkansas and Phillips, State of Arkansas, to-wit:

Parts of section	Sec.	Twp.	R.	Area
Monroe County, Arkansas:				
All	17	3-S.	1-W.	640
All	20	3-S.	1-W.	640
All	21	3-S.	1-W.	640
North Half	29	3-S.	1-W.	320
Fractional Northwest ¼ of N. W. ¼	4	3-S.	1-W.	52 49
South half of southwest quarter	4	3-S.	1-W.	80
East half	18	3-S.	1-W.	320
Fractional E. ½ of N. W. ¼, E. of River	19	3-S.	1-W.	61 65
South half of S. E. ¼, East of River	19	3-S.	1-W.	80
All of Northeast quarter East of River	19	3-S.	1-W.	160

Parts of Section	Sec.	Twp.	R.	Area
[fol. 102] Southwest quarter of Northwest quarter	4	3-S.	1-W.	40.21
North west quarter of north west quarter	8	3-S.	1-W.	40
North east quarter of south west quarter	9	3-S.	1-W.	40
All of east fractional half east of river	30	3-S.	1-W.	209.95
North east quarter of south west quarter	32	2-S.	1-W.	40
South west quarter of south west quarter	32	2-S.	1-W.	40
South east quarter of south east quarter	32	2-S.	1-W.	40
South west quarter of south east quarter	32	2-S.	1-W.	40
Fractional S. E. ¼ of Indian Bay	1	4-S.	1-W.	50.41
Fractional East ½, East of Indian Bay	12	4-S.	1-W.	140.38
North east quarter, east of Indian Bay	13	4-S.	1-W.	113.49
Phillips County, Arkansas:				
Fractional north east ¼, east of river	25	4-S.	1-W.	30.05
Fractional south east ¼ east of river	25	4-S.	1-W.	35.26
Fractional east ½ east of river	36	4-S.	1-W.	115.86
All fractional	31	4-S.	1-E.	682.56
Fractional north ½ east of river	13	5-S.	1-W.	128.83
Fractional S. E. ¼, east of river	14	5-S.	1-W.	7.11
[fol. 103] All fractional east of river	23	5-S.	1-W.	2.19
Arkansas County, Arkansas:				
All north west quarter west of river	14	4-S.	1-W.	63.28
North half S. W. ¼ west of chute	14	4-S.	1-W.	42.21
North half of N. E. ¼ east of chute	22	4-S.	1-W.	48.10
Fractional north west quarter E. of chute	22	4-S.	1-W.	4.47
North half of south half	15	4-S.	1-W.	160
South west quarter of north east quarter	15	4-S.	1-W.	40
South east quarter of north east quarter	28	4-S.	1-W.	40
North west quarter	15	4-S.	1-W.	160

the total acreage of the above described lands being five thousand three hundred and forty-eight (5,348) acres, the acreage of each tract of said lands as set forth herein being specifically agreed to by the parties hereto as the true and correct acreage of said tracts.

To have and to hold said premises unto the said vendee and unto his heirs and assigns in fee simple forever, subject to the terms and conditions herein set forth.

The Vendor hereby covenants with the vendee that he will forever warrant and defend title to said lands against all lawful claims whatsoever, except as to acts of said vendee.

And I, Agnes B. Wylie, wife of the said J. T. Wylie, for and in consideration of the sum of Ten ($10.00) Dollars in hand paid, receipt of which is hereby acknowledged, does hereby release and relinquish unto the vendee all my rights [fol. 104] of dower and homestead in and to the above described premises.

A Vendor's lien is hereby expressly reserved by the vendor and granted by the vendee to secure to the vendor the payment of the purchase money notes herein provided for,

together with interest thereon, and the performance by, the vendee of all things and matters undertaken and agreed to by him, and it is especially agreed that upon default on the part of the vendee in the payment of any of the purchase money notes herein provided for payment of interest thereon promptly when due, payment of taxes and use of due diligence in payment of same, or his failure to do and perform any one or more or all of the other matters and things herein agreed to be done by him in conformance with the tenor of each and all of said undertakings herein set forth; then the vendor shall give written notice to the vendee by registered mail addressed to the vendee, care of Southwestern Veneer Company, Cotton Plant, Arkansas, of such default and vendee shall immediately upon receipt of said notice cease to cut timber, and remove logs which have been cut from said lands, and if, within thirty days after receipt of said notice, the vendee shall not have performed or made good the defaults of which notice shall have been so given him, then the vendor shall have the right to declare all of the notes evidencing deferred purchase price herein provided for immediately due and payable, and shall have the right to enter upon and take possession of said lands and all timber which has been cut and not removed from said lands prior to said default, or such part of them as at the time of such default or defaults shall be subject to the lien thereof, and foreclose said vendor's lien herein retained.

[fol. 105] The purchase price of said lands is hereby fixed at the sum of $45.00 per acre, and the vendee agrees to pay said sum of $45.00 per acre, or a total of $240,660.00 upon the terms and conditions herein set forth. The vendee has this day paid to the vendor the sum of Ten Thousand ($10,000.00) Dollars in cash, receipt whereof it hereby acknowledged, same being part payment of said total purchase price of $240,660.00 and has on this day executed and delivered to the vendor his five promissory notes dated January 15th, 1924, payable to the order of J. T. Wylie, at the Bank of Commerce and Trust Company, Memphis, Tennessee, said five notes evidencing the remainder of said purchase price of said land, each and all of said notes bearing interest at the rate of six per cent (6%) per annum

from date until paid, interest payable on each successive July 15th and January 15th from and after this date and at due date of said notes; said notes shall also show on their faces that they are executed in pursuance of and are subject to all the terms, provisions and conditions of this instrument; said notes being in the following amounts and due upon the following dates, to-wit:

Note No. 1 in the sum of $50,000.00 due on or before January 15, 1925, Note No. 2 in the sum of $50,000.00 due on or before January 15, 1926; Note No. 3 in the sum of $50,000.00 due on or before January 15, 1927; Note No. 4 in the sum of $50,000.00 due on or before January 15, 1928; Note No. 5 in the sum of $30,660.00 due on or before July 1, 1928.

In addition the vendee hereby agrees to pay all taxes of [fol. 106] every kind and description inclusive of State, county and Special Improvement taxes which may now or hereafter be levied or assessed against said lands or the timber thereon, including taxes for the year 1923, amounting to $2,274.42, which said sum the vendee has this day paid to the vendor, the receipt whereof is hereby acknowledged.

It is agreed that said lands shall be allotted into the following described sub-division, to-wit:

Parts of section Tract Number One	Sec.	Twp.	R.	Area
Monroe County:				
Fractional E. ¼, E. of Indian Bay	12	4-S.	1-W.	140 38
Fractional S. E. ¼, E. of Indian Bay	1	4-S.	1-W.	50 41
N. E. ¼, East of Indian Bay	13	4-S.	1-W.	113 49
Phillips County:				
Fractional N. E. ¼, E. of River	25	4-S.	1-W.	30 05
Fractional S. E. ¼, E. of River	25	4-S.	1-W.	35 26
Fractional East ½, E. of River	36	4-S.	1-W.	115 86
All Fractional	31	4-S.	1-E.	682 56
Fractional North half, E. of River	13	5-S.	1-W.	128 83
Fractional South East quarter, E. of River	14	5-S.	1-W.	7 11
All fractional east of river	23	5-S.	1-W.	2 19
Arkansas County:				
All north west quarter, W. of River	14	4-S.	1-W.	63 28
North half of S. W. ¼, W. of Chute	14	4-S.	1-W.	42 21
[fol. 107] North half of N. E. ¼, E. of Chute	14	4-S.	1-W.	48 0
Fractional N. E. ¼, E. of Chute	22	4-S.	1-W.	42 21
Fractional N. W. ¼, E. of Chute	22	4-S.	1-W.	4 47
North half of south half	15	4-S.	1-W.	160 00
S. W. ¼, of N. E. ¼	15	4-S.	1-W.	40
North west quarter	15	4-S.	1-W.	160
S. E. ¼, of N. E. ¼	28	4-S.	1-W.	40
				1,863 7

Parts of Section	Sec.	Twp.	R.	Area
Tract Number Two				
Monroe County:				
All	21	3-S.	1-W.	640
Tract Number Three				
North half	29	3-S.	1-W.	320
Tract Number Four				
All	20	3-S.	1-W.	640
Tract Number Five				
All	17	3-S.	1-W.	640
Tract Number Six				
N. E. ¼ of S. W. ¼	9	3-S.	1-W.	40
Tract Number Seven				
N. W. ¼ of N. W. ¼	8	3-S.	1-W.	40
Tract Number Eight				
S. W. ¼ of N. W. ¼	4	3-S.	1-W.	40 21
Fractional N. W. ¼ of N. W. ¼	4	3-S.	1-W.	52 49
South half of S. W. ¼	4	3-S.	1-W.	80
[fol. 108] **Tract Number Nine**				
N. E. ¼ of S. W. ¼	32	2-S.	1-W.	40
S. W. ¼ of S. W. ¼	32	2-S.	1-W.	40
S. E. ¼ of S. E. ¼	32	2-S.	1-W.	40
S. W. ¼ of S. E. ¼	32	2-S.	1-W.	40
				160
Tract Number Ten				
East half	16	3-S.	1-W.	320
Fractional E. ½ of N. W. ¼, E. of River	19	3-S.	1-W.	61 65
South Half of S. E. ¼, E. of River	19	3-S.	1-W.	80
All north east quarter, E. of River	19	3-S.	1-W.	160
All east fractional half, E. of River	30	3-S.	1-W.	209 95
				831 60

It is made a condition of this conveyance that so long as any part of the purchase price herein provided for to be paid by the vendee to the vendor is unpaid that the vendee shall not have the right of entry upon said lands for the purpose of cutting the standing timber and removing the logs therefrom or to exercise the right of ownership thereof, save and except as those privileges are granted under the conditions herein specifically set forth and provided for herein and after full compliance by the vendee with the terms and conditions of this instrument as to the payment of purchase money notes, interest thereon and payment of taxes and all other conditions to such entry and exercise of ownership as set forth and provided for herein, to-wit:

The vendee shall be permitted to enter upon and cut the standing timber and remove the logs therefrom upon [fol. 109] subdivisions numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 respectively in rotation and not otherwise; that is, he shall first enter upon, cut the standing timber and remove the logs from the lands set forth in subdivision No. 1, and

when all the conditions relative to said entry and cutting of timber and removing all logs pertaining to subdivision No. 1 as herein provided for shall have been fully complied with by the vendee, he shall then have the right to enter upon and cut the standing timber and remove the logs from subdivision No. 2 and so on in rotation.

No timber shall be cut or logs removed from any of the other subdivisions until full compliance with the terms and conditions herein set forth, shall have been complied with in reference to the preceding subdivisions.

The vendee before he shall be permitted to enter upon and cut the standing timber and remove the logs from subdivision No. 1, as hereinbefore designated, shall pay all taxes upon all of the lands and timber which may be due and payable and such purchase money, notes and interest thereon as shall be due, and shall pay so much of the purchase money notes exclusive of interest whether due or not as calculated on the basis of $45.00 per acre shall aggregate a total of $83,866.50 including the $10,000.00 this day paid as hereinabove referred to, provided however, that should the vendee desire to enter upon subdivision No. 1 and begin the cutting of timber — removal of logs therefrom prior to the time, the full sum of $83,866.50 shall have been fully paid, and provided he is not otherwise in default in the performance of any other undertaking herein agreed [fol. 110] to be performed by him, he shall have the right to do so upon the payment of the sum of $30,000.00 in cash, and upon payment by him of said sum of $30,000 in cash he shall be permitted to enter upon and begin the cutting of standing timber and removal of logs from said subdivision No. 1 but, within sixty days from the date of payment of said $30,000.00 he shall pay an additional sum of $15,000.00 in cash, and within thirty days from date of said $15,000.00 he shall pay an additional sum of $20,000.00 in cash, and within thirty days from the date of payment of said $20,000.00 he shall pay an additional sum of $8,866.50 in cash, but it is distinctly understood and agreed that *there should* be a failure on the part of the vendee to pay said sum of $15,000.00 within the sixty days designated he shall discontinue the cutting of timber and removal of logs until he shall have paid the sum of $15,000.00; and should he make payment of said $30,000.00 and said $15,000.00 and fail to

pay said $20,000.00 when the same becomes due he shall discontinue the cutting of timber and removal of logs until the said $20,000.00 payment shall be made; and should he make said three payments of $30,000.00, $15,000.00 and $20,000.00 respectively and fail to pay the said sum of $8,866.50 promptly when due, then he shall discontinue cutting timber and removing logs until said payment shall be made.

It is further agreed and understood that as said payments of $30,000.00, $15,000.00, $20,000.00 and $8,866.50 are made they shall be duly credited upon principal of the first maturing purchase money notes herein provided, and it is further agreed and understood and made a condition of this contract that when the vendee, shall have paid the [fol. 111] vendor the full sum of $83,866.50, including the $10,000.00 this day paid, and shall have paid all purchase money notes, interest on same, and taxes which may have become due, and shall not otherwise be in default in the performance of anything herein agreed to be done and performed by him, then the lien of this instrument shall be fully, finally and completely released and discharged as to all of the lands in subdivision 1 as herein described and the title thereto shall thereupon become vested in the vendee and the vendor shall execute such papers as may be necessary or proper to so release and discharge said lien.

It is further agreed and understood, however, that the arrangement for payment of said sum of $83,866.50 in the manner provided is solely for the purpose of regulating the timber cutting and log removing rights of the vendee, and nothing pertaining thereto is in anywise intended or shall be in anywise construed to require the vendee to cut the timber or remove logs at any given time or make any payments other than as evidenced by purchase money notes, but, as stated, the arrangement for payment at any other time or in any other manner than as the purchase money notes severally and respectively become due is for the sole purpose on the one hand of regulating the timber cutting and log removing rights of the vendee, and on the other hand to provide for the release of the lien of this instrument on the lands in Subdivision 1 upon full payment of said sum of $83,866.50, whether paid in installments as herein provided, or whether paid on the purchase money notes in due course, it being intended that the vendee shall

have the option to make payments in whole or in part under [fol. 112] either method, but no failure upon the part of the vendee to make the installment payments shall be deemed or construed to be a default hereunder, the effect of any such failure being limited to the exercise of his right to cut timber and remove logs as herein set forth.

Upon full compliance by the vendee with all of the provisions above set forth with reference to the lands and timber — Subdivision 1, and the payment of all taxes which may be due and such purchase money notes and interest thereon as may have become due, and upon payment by him to the vendor in cash a sum equal to $22.50 per acre for the number of acres in subdivision 2, the vendee shall be permitted to enter upon the lands in subdivision 2 and begin the cutting of timber and removing of logs therefrom, but within sixty days thereafter he shall pay to the vendor a sum equal to one-third of $22.50 per acre for the number of acres in subdivision No. 2, and on or before thirty days after the payment of said one-third he shall pay a like amount, and on or before thirty days after the payment of the second one-third he shall again pay a like amount, and should he fail to pay any of said installments when due he shall at once discontinue the cutting of timber and removing of logs until said installments shall have been paid, said payments herein provided for to be credited upon the principal of the first maturing purchase money notes herein set forth.

All other provisions applicable to timber cutting and log removing rights and privileges pertaining to subdivision 1 shall also apply to subdivision 2, except as to figures, it being understood that when the vendee shall have paid to the vendor an amount equal in cash to the number of acres in subdivision No. 2, multiplied by forty-five the lien of [fol. 113] this instrument shall be released as to the lands in subdivision No. 2.

When the vendee shall have fully complied with the terms and conditions herein set forth with reference to the cutting of timber and removing of logs from the said subdivision No. 2, or to obtain release and discharge of the lien of this instrument from subdivision No. 2, the same procedure to obtain the right to cut and remove logs or to

obtain the release of this instrument shall apply to subdivisions 3, 4, 5, 6, 7, 8, 9 and 10 as herein above designated, in rotation—that is to say, as to each of said subdivisions the vendee shall pay all taxes which may be due and such purchase money notes and interest thereon as may have become due, and pay to the vendor the same proportions of cash, to-wit: $22.50 per acre, before he shall enter upon said lands, and the payment of additional installments of one-third of $22.50 for each acre in each subdivision at intervals of sixty, ninety and one hundred and twenty days; and the vendee shall not have the right or privilege fo enter upon for the purpose of cutting timber or removing logs upon any subdivision until he shall have fully and completely complied with all provisions of this contract and the payment of all installments which shall be due and payable of the preceding subdivision; and upon the payment of the respective amounts the vendee otherwise not being in default, as to any other payments or condition required, the lien of this instrument shall be released and discharged as to the lands in the respective subdivisions from time to time.

[fol. 114] It is agreed that payments made by the vendee upon the principal of the purchase money notes as herein set forth in excess of the sum required under the terms of this contract for the release of subdivisions may be applied by the vendee upon the payments required for the timber cutting rights or release of the next succeeding subdivisions as herein set forth.

Should the vendee so desire he may elect to treat two or more subdivisions as one in rotation as herein set forth and not otherwise, but an election to so consolidate shall not bind him and he may thereafter elect to separate them and proceed as though no consolidation had been made provided that no right of the vendor shall be affected by either action, it being understood and agreed the right to separate after a consolidation shall be based upon the condition that the separation shall be made only as to tracts from which no timber has been cut or removed prior to said election to separate.

Nothing herein contained shall in any wise affect the obligation of the vendee to pay the deferred purchase

money notes, together with interest thereon, promptly when due, nor his obligation to pay taxes, nor to perform any of the other obligations herein by him undertaken, and the provisions with reference to payments other than as designated by the deferred purchase money notes are for the purpose of enabling the vendee to begin the cutting of standing timber and removal of logs prior to the time he shall have paid the full sum of $45.00 per acre on the respective subdivisions.

It is hereby covenanted and agreed by and between the parties hereto that all covenants, conditions, agreements [fol. 115] and undertakings contained herein shall extend to and be binding on the parties hereto, and on their respective heirs, assigns, executors, administrators or other representatives the same as if they were in every case named and expressed.

In Witness Whereof, the parties have hereunto subscribed their names this 15th day of January, 1924.

J. T. Wylie, Agnes B. Wylie.

(Internal Revenue $243.00 cancelled.)

State of Michigan,
County of Saginaw, ss:

On this day came before me the undersigned Notary Public in and for the County and State aforesaid, duly commissioned and acting, J. T. Wylie and Agnes B. Wylie, to me well known as the grantors in the foregoing deed and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me the said Agnes B. Wylie, wife of the said J. T. Wylie, to me well known, and in the absence of her said husband, declared that she had of her own free will executed the said deed and signed and sealed the relinquishment of dower and homestead in the same instrument, for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal, on this 24th day of May, 1924.

Clara E. Kynast, Notary Public.

[fol. 116] My commission expires October 4, 1926. (Seal.)

Filed for record August 4th, 1924, at 8 o'clock A. M. and recorded August 5th, 1924. R. H. Allen, Circuit Clerk and ex-Officio Recorder.

STATE OF ARKANSAS,
County of Arkansas, ss:

I, Duce Pike, Circuit Clerk and ex-Officio Recorder, within and for the County and State aforesaid, do hereby certify that the annexed and foregoing pages of typewritten matter contain a true, correct and complete copy of the Deed of J. T. Wylie and wife of Saginaw, Michigan, Vendor, to S. H. Bush of Cotton Plant, Arkansas, Vendee, as the same appears of record in Records of Deeds and Mortgages A-6, at page 183, of the records of Arkansas County, Arkansas, Southern District thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this the 4th day of February, 1926.

Duce Pike, Circuit Clerk and ex-Officio Recorder, by
Ruth Lowe, D. C. (Seal.)

[fol. 117] Deposition endorsed: (Original.) S. B. Dennison, C. H. Kirkpatrick. Filed in my office January 28th, 1927. Duce Pike, Clerk.

[fol. 118] [Title omitted]

Deposition of witness produced, sworn, and examined on the tenth day of June, A. D. 1926, between legal hours, before Helen W. Wing, a notary public within and for Pulaski county, Arkansas, duly commissioned, qualified, and acting, at the law offices of Buzbee, Pugh & Harrison, in the Home Insurance Building, in the city of Little Rock, Arkansas, upon the part of the defendant in the above-styled cause, now pending in the above-entitled court; all formalities of taking, transcribing, and transmitting being waived by agreement between counsel

Appearances:

For the Defendant: Buzbee, Pugh & Harrison, by Thos. S. Buzbee, Esqr.

For the Plaintiff: J. M. Rose, Esqr.

[fol. 119] W. W. KEATON, of lawful age, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the defendant, testified as follows:

Direct examination:

Questions by Mr. Buzbee:

Q. Your name is W. W. Keaton?

A. Yes, sir.

Q. Where do you live?

A. At Clarendon, Arkansas.

Q. How old are you?

A. Thirty-four.

Q. How long have you lived at Clarendon?

A. I have lived there since January 1, 1925. Also lived there two years several years ago; 1922 and 1923, I think.

Q. With the exception of the time that you have lived at Clarendon, where have you lived?

A. In Arkansas county.

Q. For how long?

A. All my life.

Q. What is your business now?

A. Timber and lumber business.

Q. What connection have you with the defendant, White River Lumber Company?

A. Manager of the Arkansas Branch.

Q. How long have you been manager for the White River Lumber Company?

A. I have been manager since 1919; was made manager [fol. 120] in 1919. Previous to that time I was with them, I think, two years, in different capacities.

Q. What was your business or profession before entering the employ of the White River Lumber Company?

A. I was County Surveyor of Arkansas county; engaged in the surveying and engineering business.

Q. Are you familiar with the lands in Arkansas county?

A. I am familiar with practically all of Arkansas county.

Q. How long were you county surveyor?

A. Four years, I think; practically four years. I filled an unexpired term of Logan Fitzhugh and then served one term, one two-year term, of my own and part of another term, until I resigned to go to the White River Lumber Company.

Q. What is the approximate area of Arkansas county?

A. Approximately a thousand square miles.

Q. That would be approximately——

A. Six hundred and forty thousand acres, approximately?

—. ——.

A. About twenty-five per cent of the county is timber lands now. Originally Arkansas county was about half timber. A lot of that timber land has been put in cultivation. All that is not in the overflowed area is now in cultivation; practically all of it.

Q. That leaves yet about twenty-five per cent of the land that is timber land?

A. I think that about twenty-five per cent is as near as any one could estimate it.

[fol. 121] Q. All of the land of the White River Lumber Company is timber land, is it not?

A. Yes.

Q. How does the timber land of the White River Lumber Company compare with the other timber lands of the county?

A. As a whole, it is about the same average kind of timber land.

Q. Are you familiar with the lands in Arkansas county originally owned by W. P. Porter and sold by Porter to S. B. Dennison, H. F. Linder and J. M. Linder about 1920?

A. I am.

Q. What character of land is that and how does it compare with the White River Lumber Company land?

A. The Porter tract of land, as we all know it, consists of part of Hickory Ridge, Caney Point, and Rattle Snake Hill. It is not in the lowest part of White River bottoms. It is on a very high ridge and is considered very

valuable for farming purposes. It overflows—I don't suppose it will overflow one year out of ten, and, as everybody knows, the higher ground always has the better grade of timber and more gum timber. This Porter tract of land was very good timber. In fact, it was as good a tract of timber as I ever saw. It lays on the North and West side of Esses Bayou and in going into the timber, after you leave the high upland, you find a second bottom, and this Porter land is the second bottom. Then when you cross [fol. 122] Esses Bayou you drop off into land about ten or twelve feet lower, which is overflowed every year.

Q. What character of timber was on this Porter land?

A. Principally gum and, well, it must have run about sixty per cent gum and about thirty per cent—twenty-five to thirty per cent forked leaf white oak and cow oak, and also quite a lot of hickory. That's where part of this tract of land got its name as Hickory Ridge, on account of the fine Hickory that was on it.

Q. Would you say, Mr. Keaton, that that land was as valuable or more valuable than the White River Lumber Company land?

A. I would say that it is more valuable than the White River——

Mr. Rose: Or less valuable?

Witness (continuing): I would say that it is more valuable than any tract the White River Lumber Company owns.

Q. I believe you stated it had a value for agricultural purposes?

A. Yes, sir.

Q. Has any of the White River Lumber Company land a value for agricultural purposes?

A. They have a few acres that is on high ground. One corner of a tract of their land corners on the edge of Rattle Snake Hill, and there is about five or six acres in that; just runs up to the top of the Hill and corners; just a few [fol. 123] acres, I would say not over ten acres of their entire holdings are on high ground. The balance of the land is in the low bottoms.

Q. How often and how much does it overflow?

A. White River Lumber Company's land?

Q. Yes.

A. Every year since I have been connected with it, and it overflows from four to six months—well, not from four to six—from sixty days to six months every year; an average of about four months out of the year.

Q. Are you familiar with the tract of land owned by Storthz in Arkansas county?

A. I am. I worked for Mr. Storthz two years and during that time I surveyed a large part of his lands, and prior to that time I was associated with Captain Maxwell, at De Witt, and we jointly surveyed and estimated all of the Storthz land. During the time that I was with myself I surveyed the tract of land in Arkansas county in Township 3 South, Range 2 West, which is the tract that he sold to Mr. Dennison.

Q. Approximately how much land has Storthz in Arkansas county?

A. At that time he had twenty-four thousand acres. He has sold quite a lot of land or timber since that time. I don't know whether he has sold the timber and land or just the timber.

Q. How does that land compare with White River Lumber Company land?

A. The entire Storthz tract?

[fol. 124] Q. Yes, that part of it in Arkansas county.

A. All of it is in Arkansas county. It compares as a whole—it is just about like the White River Lumber Company's tract as a whole.

Q. How is it situated with reference to the White River Company's land?

A. It adjoins it in—it lays in the same territory and adjoins it in a number of places. In fact, in the territory east of Weber they are the only two owners in that territory of any consequence.

Q. Are you familiar with the tract of land sold by J. T. Wylie to S. M. Bush in January, 1924?

A. I am.

Q. What is the character of that land and how does it compare with White River Lumber Company's lands?

A. The Wylie tract of land is very good timber, most of it is in Monroe county, in Township 3 South, and they have very little waste land on the entire tract. It is all

good timber. It is a much better tract of land than the White River Lumber Company's entire tract. It runs very heavy to gum; also some forked leaf white oak on the high parts of it. A small amount of that land doesn't overflow, but most of it is in the bottoms.

Q. It has been testified that that land sold for forty-five dollars an acre in 1924. Do you know what that land had sold for previous to that time?

A. Yes, sir. A few years previous to that Mr. Bateman, H. B. and T. T. Bateman, sold it to Mr. Wyley at twenty-five dollars per acre.

Q. Is it still owned by Mr. Bush?

A. It is.

Q. He hasn't sold it.

A. No.

Mr. Rose: How do you know it sold for twenty-five dollars an acre? Do you know that personally or did you hear [fol. 125] someone say that?

A. I was living at St. Charles when Mr. Riley bought it and he sent timber cruiser down from Saginaw to go over this land and as we were operating in that territory—the cruiser was Mr. Brogan—and as we were operating in that territory, Mr. Brogan wanted me to go with him over the land and give him any data I could as to what our lands had been cutting——

Mr. Rose: And the cruiser told you that it sold for that?

A. Mr. Brogan is an officer in the company——

Mr. Rose: You don't know, as a matter of fact, that it sold for twenty-five dollars an acre?

A. Nothing except that Mr. Wylie later told me that he paid that for it, and that Mr. Hayes and Mr. Brogan who were also members of the same firm, told me they had paid that for it.

Mr. Rose: We object to the answer to the foregoing question because it is wholly incompetent and purely hearsay.

Q. Do you know, Mr. Keaton, whether there are other large bodies of timber in Arkansas county owned by individuals?

A. Yes, sir. The Storthz timber approximately twenty-four thousand acres; the Chicago Mill & Lumber Company

—I don't know the exact acreage in that block but I think it is about seven or eight thousand acres; the L. M. Jones [fol. 126] tract about fifteen thousand acres; the——

Q. Who owns that?

A. An individual; Linah Melvin Jones, Mr. W. S. Probst, at the time I was surveyor I surveyed about four or five thousand acres for Mr. Probst. I don't know whether he still owns it or not. The Henry Wrape Company. I don't know how much they own, but I do know that they own a vast acreage in the Western part of Arkansas County.

Mr. Rose: Approximately how much?

A. Probably three or four thousand acres, on Bayou Meto. J. S. Bilby owns a large acreage. I don't know how much he owns, but his lands are scattered over the entire timber area of the county. I once made a map of Arkansas county and I know that Bilby owns a large acreage of scattered lands.

Mr. Rose: Approximately ten thousand acres.

A. No; about a thousand, I suppose. E. L. Stocking owns, or did own, approximately two thousand acres. A. Moss, of Almyra, owned approximately two thousand acres. I believe your question was individuals?

Mr. Buzbee: Yes.

Witness (continuing): That's all that I can think of. I named the Storthz timber, didn't I? Well, now this S. M. Bush land—that's not in Arkansas county, only a small part of it——

Mr. Rose: How much does Storthz own?

A. Approximately twenty-four thousand acres.

[fol. 127] Q. You do not mean to say that these are all of the individual owners of timber land in Arkansas county?

A. Only the ones that I can think of at this time. There are hundreds of owners of small tracts——from forty acres up to a section. I was only trying to name the ones that owned large acreage.

Q. Then in addition to these owning large acreage, there are a great number owning smaller tracts?

A. Yes, sir.

Q. Do you know approximately how many acres of timber lands there are in Monroe county?

A. Approximately one hundred and fifty thousand acres.

Q. Has the White River Lumber Company paid its taxes on its lands in Arkansas and Monroe counties, as assessed by the assessing officers, during your connection with them?

A. Yes, sir.

Mr. Buzbee: I believe that's all.

Cross-examination.

Questions by Mr. Rose:

Q. Mr. Keaton, you stated you are manager of the White River Lumber Company?

A. Yes, sir.

Q. When did you begin your work with that company?

A. In 1919, in that capacity?

Q. You are regularly employed, are you not?

A. Yes; since 1917.

Q. You have no other work? Just manager of the White River Lumber Company?

[fol. 128] A. Yes, sir.

Q. You testified, Mr. Keaton, that there were six hundred and forty thousand acres in Arkansas county and that formerly fifty per cent of that acreage was timber lands, and that now approximately twenty-five per cent of it is in timber lands. That would mean, of course, that formerly there were three hundred and twenty-five thousand acres of timber lands and there are now approximately a hundred and sixty thousand acres of timber lands. Now, you have stated that your lands—the lands of the White River Lumber Company—are about like the average timber lands in Arkansas county. In making that statement, you meant to say, didn't you, that the lands of the White River Lumber Company are on a par with other timber lands of other lumber companies and parties dealing in timber lands and are not like the entire hundred and sixty thousand or three hundred and twenty thousand acres over the county?

A. I think that as a whole, taking the entire White River Lumber Company tract as a whole, its about the same class and value of timber land as the average for the entire county.

Q. Do you mean to tell me that the White River Lumber Company's land is no more valuable than a lot of little one-

horse, forty acre tracts owned by individuals that is forfeited frequently for taxes ?

A. Well, you can pick out a lot of small tracts of land that are worthless. You could pick out a lot of our land that is worthless. As a whole, I say that its about of equal [fol. 129] value.

Q. Isn't it true that there are thousands of acres in Arkansas on which there is not even one hundred feet of merchantable timber?

A. Well, a hundred feet is a very small amount of timber. If it had one tree it would have more than that——

Q. Yes, of course, but there are thousands of acres that haven't even one tree.

A. There are lots.

Q. What would your company give for such lands?

A. It would be worthless.

Q. Then you could not contend that an assessment of that land at four dollars and acre, which has been the case, would be fair to the owner of that land, when your land is assessed at only four dollars an acre?

A. There are thousands of acres of the White River Lumber Company lands that are just as worthless.

Q. Yes, but on the other hand, there are thousands of acres which have immensely valuable timber on them and over twenty thousand feet to the acre. But we haven't taken it on an average, considering the good with the bad. Now, do you mean to testify that the land of the White River Lumber Company is not worth more than the average value of all these worthless cut-over tracts of timber land in Arkansas county, taken with the whole?

A. I don't mean to testify that the White River Lumber Company land is not worth more than the cut-over tracts, [fol. 130] but I do mean to testify that it is of about an equal value with the entire land, not with the good——

Q. But do you——

Mr. Buzbee: John, you let him testify.

Mr. Rose: I am, but there is no use—Well, testify.

Q. Do you mean to say that the lands of the White River Lumber Company are not as good on an average with the lands of the Chicago Mill & Lumber Company and of other companies which own lands in that county for sale—other concerns which buy timber as a business proposition?

A. The timber lands of White River Lumber Company are of about an equal value with the entire timber lands of Arkansas county. They—some of the companies you refer to may have some more valuables—some small tracts of lands of greater value per acre. I know that there is a large acreage of worthless lands in the county.

Q. Mr. Keaton, you have testified that the lands of the White River Lumber Company were worth about the same as the lands of Storthz, isn't that true?

A. Yes, sir.

Q. Now the lands of Storthz sold for thirty dollars an acre to Dennison and others. Don't you know that?

A. Yes, I do know that a part of it did; sixteen hundred or seventeen hundred acres.

Q. But don't you know that Storthz for several years held that land up for fifty dollars an acre?

[fol. 131] A. I know that I bought seventeen hundred acres from Mr. Storthz about sixty daye ago for twelve dollars an acre.

Q. But you do know that this particular tract sold for thirty dollars?

A. Yes, sir.

Q. And don't you know that he has been holding it for fifty dollars?

A. No. When I was working for Mr. Storthz he tried to get me to sell this land for him to the White River Lumber Company and put a price of fourteen dollars an acre all around on the entire tract, and I was representing both of them, and they advised Mr. Storthz they wasn't interested in the land at the price. He also sold seven thousand acres to Mengel Company at twenty dollars an acre. There is an option now on the balance of the timber at thirteen dollars an acre. He has given an option to the Thane Lumber Company for thirteen dollars an acre. I made a trip over here to see him about buying it and he told me he couldn't give any option until the expiration of the Thane option.

Q. You mean to say that he has given an option for all of his land in Arkansas county at thirteen dollars an acre?

A. All the balance.

Q. That does not include the land?

A. That's just the timber, and I understand—he told me that he was going to give the land to his son, the one that is in the Crescent Jewelry Store, to get what he could get [fol. 132] out of it for fishing and hunting privileges. Joe Storthz, it was.

Q. Where did you get your information that Mr. Storths was offering the balance of the land for thirteen dollars?

A. Mr. Storthz told me.

Q. When did he tell you?

A. We bought seventeen hundred acres from him on the fourteenth day of April and he told me that the balance was under option to Thane Lumber Company for ninety days, at thirteen dollars an acre.

Q. Don't you know, as a matter of fact, that he has offered this to other parties at from thirty to fifty dollars an acre; the balance of this timber land?

A. No, sir.

Q. You don't know that?

A. I never knew of him hanging a price like that on it.

Q. What has land of the White River Lumber Company been assessed at, Mr. Keaton, for the years 1915 through 1925?

A. I have never looked up the assesments prior to the time that I was connected with the company, but I think it's been assessed at from four to six dollars an acre.

Q. It's a fact that it's been assessed at four dollars all but one year, and five dollars for that year, isn't it?

A. I don't know, except that it was four to six.

Q. Now, these lands of Storthz that you testified to. How do they lie in regard to the river? How far are they from the river?

[fol. 133] A. Some of it lays on the river; adjoining the river.

Q. What per cent of it?

A. Well, without a map I couldn't say, but there's——

Q. Now——

Mr. Buzbee: Let him testify, John; this is his disposition. You ask him a question and then won't let him answer.

Witness (continuing): Not a very large amount of it. However it is intersected by a number of navigable bayous and streams.

Q. The White River Lumber Company lands—they lie, or rather, are intersected by White River, are they not, practically the entire tract?

A. White River Lumber Company's lands lay all in Range 1 West and a large part of it is within a few miles of the river.

Q. They are particularly well located for transporting logs?

A. Yes; they are close to the river, but not any more favorably located than the Storthz lands.

Q. The Storthz lands—how many thousand feet to the acre are on those lands?

A. The entire Storthz tract of timber would cut approximately three thousand feet per acre. The seventeen hundred acre tract probably would cut four thousand feet per acre to forty-five hundred. The seven thousand acre tract which they sold to the Mengel Company would cut about thirty-five hundred feet to the acre.

Q. What has been the value of logs in that community since you have been connected there?

[fol. 134] A. Delivered on the bank of the River, or where?

Q. Yes; delivered.

A. The price since 1917 has fluctuated very much. In 1918 the gum logs were selling for twelve dollars per thousand; and oak at from twelve to fifteen dollars for overcup and red oak and twenty to twenty-five dollars for forked leaf white oak and hickory. In 1919 the price was about five or six dollars more—seventeen to eighteen dollars for gum and proportionately more on the other kind. In the early part of 1920, before the break in everything—before the financial crisis, you might call it, logs reached a very high point. At one time they were selling as high as forty-five or fifty dollars. However, that continued only for a few months and it was at a season of the year, first half of the year, when the larger part of the White River lands, that is, I don't mean the White River Lumber Company lands, but the lands in the White River territory, were overflowed and logs couldn't be moved and sold on

those high prices. Some of them did sell some at those high prices. In 1921 there was practically no market for logs. We didn't operate in 1921.

Q. Logs were not worthless, but no sale in that year.

A. One of the mills——

Q. But they were not worthless?

A. Yes, they were worthless.

Q. Were you giving them away?

A. We had some logs we carried over in 1920, that we [fol. 135] put out on a contract in 1920 to Saginaw Cooperage Company that they didn't take up before the break in the market came and in 1921 we couldn't dispose of them at all, and to keep from having the logs entirely lost to us we were forced to tow them to Arkansas City and have them custom-sawed, and even at that we haven't got back the amount of towing and logging cost.

Q. How much did you handle in that manner?

A. Nearly four million feet.

Q. The balance you kept over until later years?

A. The balance we never cut.

Q. Now how about the next year?

A. In 1922 the market revived some. The price in 1922 was about like that of 1919.

Q. How about 1923?

A. In 1923, about the same. Gum logs were selling at from fifteen to eighteen dollars; and oak, twenty dollars to twenty-two dollars for overcup and red oak, thirty to forty dollars for forked leaf white oak and hickory. In 1924 was very little change in the market.

Q. How about '25?

A. '25 was—I know of a lot of logs that sold at the same price. I believe the market was a little stronger.

Q. What was the first year you testified to?

A. 1918.

Q. And for the years 1915 to '17; how did those years compare?

[fol. 136] A. I never sold any logs during that period. I —that was during the War, the years 1915 to 1917, and there was a great — of building, and the price compared favorably with that in 1925. The price of logs has been increasing until 1920, until the summer of 1920. The price for 1915 to 1917 was lower than in 1918.

Q. How much lower?

A. I know of one block of gum logs that was sold then——

Q. Well——

Mr. Buzbee: Let him testify.

A. For six dollars in 1916. E. L. Stocking sold the logs to the Mengel Box Company.

Q. Was that the market price in that year or an exceptional sale at a very low figure?

A. I wasn't in the——

Q. You don't know?

A. I don't know.

Q. What was the cost of logging?

A. Over what period?

Q. During that period; the average cost?

A. From 1918 to the present time the average cost of cutting and hauling the logs has been from five to eight dollars. However, we have paid as high as fifteen dollars for logging during the high price market.

Q. What has been the average cost?

A. It would be somewhere between five and eight dollars.

Q. Mr. Keaton, Mr. Buzbee has asked you about a sale [fol. 137] made in 1920, I speak of the sale by Porter to Dennison and Linder, of Memphis. I believe you stated that land was about like the White River Lumber Company's lands?

A. No, I don't think so. I don't think I said that.

Q. What did you state.

A. I stated that was the best tract of timber I ever saw.

Q. That land sold for forty-five dollars an acre; isn't that true?

A. I don't think it did, but I don't know.

Q. Don't you know that the purchasers of that land made about one hundred thousand dollars on the deal?

A. I don't know whether they did or not.

Q. You stated something about overflow. Isn't it always assumed that timber lands which are near the river are subject to overflow? Isn't it practically always the case? Isn't it always taken into consideration?

A. Yes, all the bottom land on the White River is subject to overflow.

Q. Then if you are going to have the benefits of the river navigation you have to stand the burden of an overflow?

A. Well, there are some lands that are near enough to have the advantage of river navigation and still not overflow.

Q. Very little though?

A. Well, this Porter land laid on Esses Bayou and the [fol. 138] high land extended—second bottom—extended right up to the bank of the bayou, and they had river navigation and at the same time had a very small danger of overflow. They logged all winter on that tract of land, in the Spring of 1920, when logs were high—were valuable, I guess, instead of high.

Q. Mr. Keaton, your company has been cutting a good deal of timber from these lands in Arkansas county?

A. Yes, sir.

Q. How much timber has it been cutting to the acre? How many thousand feet?

A. Different tracts of land have cut different. We have cut land that didn't cut but around twelve hundred feet to the acre. Some have cut very high.

Q. How much?

A. Well, we cut one tract that cut eight or nine thousand feet. But that was on the M. H. & L. Railroad, near the Mississippi River.

Q. That was in Arkansas county?

A. That was in Desha county, near the Laconia Circle.

Q. It is the part of the lands sued on in this case?

A. It is the Southeast quarter of Section 35, 71. It lays out about three miles further east than the body of the White River Lumber Company's land. It lays very near to the Laconia Levee, on high ground; contains a large amount of cottonwood.

Q. I believe all those lands were included in this suit. [fol. 139] Now, how many acres of land does your company own in Arkansas county?

A. Approximately twenty thousand eight hundred acres.

Q. How many acres in Phillips county.

A. Approximately sixty-five hundred acres. Now I haven't the exact acreage here. I didn't bring a list of our

holdings. I am just giving you these acreages as nearly as I can remember them.

Q. How many acres in Desha county?

A. Twelve thousand eight hundred.

Q. How many acres in Monroe county?

A. Forty-four hundred.

Q. Big Island, in Arkansas county, contains how many acres?

A. A little more than seven thousand; approximately seventy-two hundred acres, that we own. The island contains about nine thousand acres.

Q. Isn't it true that part of the lands on that Island have produced as much as twenty to twenty-five thousand feet to the acre?

A. I expect you could pick out an acre on some high gum ridge that would produce twenty or twenty-five thousand feet. You——

Q. First, let me ask you, does your company own lands in any other counties?

A. No, sir; just those four.

Mr. Buzbee: Did you finish your statement about Big Island?

Witness (continuing): You could find an acre that would [fol. 140] cut twenty to twenty-five thousand—high gum ridge, where there was a perfect stand of gum timber, but you couldn't find any tract of forty acres, or of any consequence, that would average anything like that. I have never known of any tract that was cut on Big Island cutting anything like that as an entire tract.

Q. Mr. Keaton, how much have you offered your lands for sale for, on Big Island?

A. We have never offered them for sale.

Q. Haven't you made prices at from seventy to a hundred dollars an acre?

A. I have not.

Q. Do you know whether other members of the company or officials have?

A. Not to my knowledge.

Q. Haven't you been offered seventy dollars an acre and refused?

A. No, sir.

Q. Didn't Mr. S. B. Dennison, of Stuttgart, offer you seventy dollars?

A. I don't think Mr. Dennison ever made any offer on it. If Mr. Dennison had made an offer I wouldn't have considered it of any—having any meaning whatever, because he is not in financial condition to buy anything.

Q. Hasn't he associates in Memphis who are rich and could handle the deal?

A. His associates you speak of is Linder Bros., I suppose——

[fol. 141] Q. And others?

A. H. F. and J. M. Linder took the bankruptcy law about sixty to ninety days ago.

Q. But hasn't he other rich lumber men associated with him in Memphis, for whom he buys timber lands, as reflected by the depositions in this case and certified copies of deeds?

A. No, sir.

Q. Since giving his deposition in this case didn't Mr. Dennison come to you and you asked him at the time if he testified in this case that he would give sixty-five dollars an acre for these lands, and didn't he at that time state, "Yes," and that he would raise that offer to seventy dollars an acre?

A. He never made any offer.

Q. You mean to say that he didn't say he would give seventy dollars, and good financial, responsible men with him in the purchase?

A. He never made that offer with me.

Q. You testified in regard to the sale from J. T. Wylie to S. M. Bush in 1924 of certain lands at forty-five dollars an acre. How many thousand feet to the acre would those lands cut?

A. Mr. Brogan's estimate on that tract of timber was fifty-five hundred feet. At that time they were operating a cooperage plant at Carendon and used the timber—all classes of logs down as low as ten inches in diameter. [fol. 142] They took that into consideration in making their estimate.

Q. Mr. Keaton, do you know how many owners of timber lands there are in Arkansas county?

A. No, sir.

Q. Probably several thousand?

A. I don't know that there would be several thousand, but there would be several hundred, I expect.

Q. How many of those tracts owned by these several hundred taxpayers would your company be interested in buying?

A. We haven't tried to buy any of it except some of the Storthz land. They would probably be interested in buying any that adjoined their present holdings.

Q. Practically all the valuable timbed lands of Arkansas county are practically all owned by probably a dozen corporations and individuals who are engaged in buying and selling timber lands, or in manufacturing lumber?

A. Yes, I think so.

Q. Then practically all of the balance of these hundreds of taxpayers own timber lands that are practically valueless?

A. No; the lands that these smaller owners own is probably just as good as the larger tracts, but a lot of it is small tracts.

Q. Do you mean to say that all timber land in Arkansas county is worth the same?

A. No, sir. A lot of it is just as good—I think the lands owned by small owners in Arkansas county is just as good [fol. 143] per acre, on an average, as the tracts that are owned by larger concerns, but the few larger concerns do own the most of the acreage.

Q. Well, isn't it true that a great many of the smaller owners have lands which are absolutely valueless, that you wouldn't give a dollar an acre for?

A. Yes.

Q. And that land is assessed at four dollars an acre, just as the land which has been selling for forty-five and fifty dollars, and is worth far in excess of that, has been selling at?

A. I don't know what its assessed at. I suppose its all on a flat rate.

Q. You have many acres, in fact, I suppose, several hundreds of acres which, taken by themselves, the poorer class, you would consider excessively assessed if it was assessed like other lands of the county?

A. Yes, sir; we have several hundred, probably a thousand acres, that are worthless, and we would gladly let them forfeit for taxes if it were not for the fact that we want to keep our block intact.

Q. Large tracts of timber land are worth more in proportion per acre than small ones? It makes it easier to handle?

A. It makes it easier to handle. Well, there might be a slight difference. The only difference I see would be being able to protect it from timber depredations. That is our only idea in keeping our land blocked up, to keep some questionable owners from getting a tract of land laying adjoin-
[fol. 144] ing us and giving us trouble about getting over the line. That is the only disadvantage I see. Of course, if it were forty acres it would be more expensive to log than a larger tract.

Q. In other words, that's all the difference you see between owning timber lands in a large body, and the cost of handling you don't make any allowance for?

A. The cost of handling on a tract as large as three hundred and twenty acres wouldn't vary but very little from the cost of handling several thousand acres.

Q. Well, Mr. Keaton, what would be the difference in the value of ten forty-acre tracts of timber lands scattered all throughout the county and four hundred acres all in one body? Would there be a great difference, with the same class of timber?

A. Yes; there would be a difference in the ten forties.

Q. Would there be a great difference?

A. The only difference would be the cost of superintendence, and that difference in cost would not exceed one dollar per thousand feet.

Q. Well, wouldn't there be a great difference in the cost of cutting and logging?

A. We have always been able to get our small tracts logged just as cheaply as the large. In fact, we never let a logging contract for a greater acreage than the contractor will cut and deliver in one season.

Q. But, do you mean to state that you could log ten forty acre tracts of timber land practically as cheaply as you
[fol. 145] could log one four hundred acre tract, when the

ten are separate throughout the county—not more than one dollar per thousand?

A. That's based on our cost of our own logging operations—hasn't cost us over one dollar's difference.

Q. You haven't many small contracts?

A. We have let a number of contracts on forty and eighty acre tracts—logging contracts.

Q. Mr. Keaton, you are familiar with the recent sale of thirty thousand acres of timber lands right near your company's lands in Monroe county of the Ayer-Lord Tie Company, at about sixty dollars an acre?

A. I know that the Ayer-Lord Tie Company were figuring with some people on the sale of their land. Their attorneys told me yesterday that the sale had not been consummated. Its been announced in the newspapers that the sale is closed, but the attorneys say it has not been closed.

Q. It was announced——

Mr. Buzbee: The defendant will object to the newspaper announcement——

Mr. Rose: I'll change the question.

Q. The cruise of that timber which has been made by Spain, the expert cruiser in Memphis, shows that approximately three million feet were cut from those thirty thousand acres, does it not?

A. Three hundred million?

Q. Yes, three hundred million?

[fol. 146] A. I don't know anything further than what I saw in the newspapers.

Q. Their assessment was raised to seventeen-fifty an acre, wasn't it?

A. I have never seen the assessment, but I have heard that it was.

Q. And it was again raised this year to twenty-five dollars an acre?

A. I don't know. The raise in the assessment of the Ayer-Lord Tie Company and the Chicago Mill & Lumber Company in Monroe county was due to——

Mr. Rose: But that's irrelevant and incompetent—never mind about that.

Mr. Buzbee: But we think its competent—leave it in.

Q. Mr. Keaton, you bought about seventy-five thousand dollars worth of stock in the White River Lumber Company, didn't you?

A. Yes, sir; I paid twenty-five thousand dollars for it.

Q. How much stock did you get?

A. I got one-thirtieth of two hundred and twenty thousand, six hundred—between seven and eight thousand dollars.

Q. Then the stock is above par?

A. Yes.

Q. Worth about three for one?

A. Something like that.

Mr. Rose: That's all.

[fol. 147] Redirect examination.

Questions by Mr. Buzbee:

Q. About what value per acre, Mr. Keaton, did the purchase price of your stock represent?

Mr. Rose: I object. That's not competent.

Mr. Buzbee: It is competent.

Mr. Rose: The company has other property besides timber lands.

Mr. Buzbee: You can object, if you want to, but he can answer.

A. I bought the stock before the mill was built—had no other property except what is represented by the timber lands. I bought on a basis of seventeen dollars and a half per acre value.

Q. You stated a while ago that it would be possible to pick an acre here and there on Big Island that might cut twenty thousand feet to the acre. What is the highest you have cut on any tract of land of any size on Big Island?

A. On Big Island? We logged—we cut the timber on the southwest quarter of Section 10, west of chute, and fractional sections 14 and 15, south of chute, Township 5 South, Range 1 West, containing 580.56 acres. From that we got 2,403,661 feet, which would be slightly over four thousand feet per acre. That tract of timber was cut clean,

during the years 1920 to 1923, logged by Mr. J. B. Horton and S. H. Moore, and that is the particular tract of land referred to by Mr. Dennison in his deposition as the five hundred acre tract laying west of Big Island chute. We logged section 22 and Northwest quarter of Section 23, [fol. 148] Township 4 South, Range 1 West, 549.36 acres. We logged that in 1920; logs were cut by Mr. S. M. Winters. We got 1,604,674 feet, which is approximately three thousand feet per acre.

Q. Do those tracts represent an average of what you have been able to cut on Big Island?

A. They do.

Q. You spoke of a tract in Desha county on which you cut nine thousand feet per acre. How many acres were there in that tract?

A. A hundred and sixty acres.

Q. Mr. Rose asked you if you did not know that Dennison and Linder Bros. made one hundred thousand dollars on the Porter lands. You stated that you did not know. I will ask you if you do not know that they are now bankrupt?

Mr. Rose: We concede that Linder is now bankrupt.

Q. You state that there are about nine thousand acres of land on Big Island and that the White River Lumber Company owns about seven thousand. Who owns the other two thousand acres?

A. It is owned by E. A. Rolfe and the Union & Planters Bank, Memphis. Rolfe is at Forrest City.

Q. You mean that they own the other two thousand jointly or separately?

A. Jointly. Well, there is also a tract of a hundred and seventeen acres owned by S. B. Dennison and forty acres owned by S. M. Bush. With those exceptions I think that's all of the land.

[fol. 149] Mr. Rose: Mr. Dennison has some assets then.

A. I didn't say Mr. Dennison is bankrupt. Linder Bros. have gone through bankruptcy proceedings, and there is a judgment in the Northern District of Arkansas County, and also one in Monroe county, against Mr. Dennison. I

bought one of those judgments the other day and had it put on record in Monroe county.

Mr. Buzbee: That's all.

Witness: On this Big Island, you started into there—those two tracts wasn't all we have cut. Did you want all? There are some others that we have also logged on Big Island and they show about the same average. These others would only show that we have cut in several places and still getting the same average.

Recross-examination.

Questions by Mr. Rose:

Q. Mr. Keaton, you have testified as to two tracts from which you have cut on Big Island, and which brought from three to something over four thousand feet to the acre. You testified in your cross-examination that some of the land on Big Island was bringing over twenty thousand feet to the acre. How do you account for the great difference between that?

A. I stated on cross examination that it would be possible to pick out an acre which would cut twenty to twenty-five thousand feet.

Q. Then you have picked out an acre on which it is only possible to cut three or four thousand?

[fol. 150] A. I haven't picked out any acre. I have given you the actual records of the amount of timber we cut from the lands that we have cut on Big Island.

Q. What price is your company willing to give——

Mr. Buzbee: I object. Purely a personal inquiry Mr. Keaton has nothing to do with.

Mr. Rose: It has a direct bearing on the value of the land.

Mr. Buzbee: They don't have to sell it at all for any price.

Mr. Rose: I concede that.

Mr. Buzbee: Mr. Keaton has stated he hasn't any authority——

Q. Have you heard any of the officers of the company fix a price on this acreage of seventy dollars an acre—this Big Island tract?

A. No, sir; I haven't.

Mr. Rose: That is all.
Mr. Buzbee: That all.

(Signature waived.)
Witness excused.

[fol. 151] State of Arkansas,
County of Pulaski, ss:

I, Helen W. Wing, a Notary Public within and for the County of Pulaski and State of Arkansas, duly commissioned and acting herein, do certify that, by consent of the respective counsel herein appearing, there came before me, at the offices of Buzbee, Pugh & Harrison, 723 Home Insurance Building, Little Rock, County of Pulaski and State of Arkansas, the within named W. W. Keaton, who was by me first duly sworn to testify the whole truth of his knowledge touching the matters in controversy aforesaid; that he was examined and his statements reduced to writing by me, and that his signature was, by agreement of counsel, waived, on the day, between the hours, and at the place set forth; and his said deposition is now herewith returned.

Given under my hand and seal in said city, county and State, this 11th day of June, 1926.

Helen W. Wing, Notary Public. My commission expires March 21, 1929. (Seal.)

Endorsed: #2226. Original. Arkansas Chancery Court. State of Ark. Ex rel H. W. Applegate, Attorney General, Plaintiff, vs. White River Lumber Co., Defendant. Deposition of W. W. Keaton, 6-10-26. Filed in my office Dec. 6th, 1926, Duce Pike, Clerk.

[fol. 152] (Title omitted)

Depositions of witnesses produced, sworn, and examined on the sixth day of April, 1926, between legal hours, in the Arkansas County Southern District Court House, in the town of DeWitt, Arkansas, before Walter Powell, a notary public within and for the State of Arkansas, duly

commissioned, qualified, and acting, to be read in evidence upon the part of the defendant in the above-styled cause, now pending in the above-named court, all pursuant to agreement of the respective counsel herein appearing

Appearances:

For the Plaintiff: John M. Rose, Esqr.

For the Defendant: Buzbee, Pugh & Harrison, by T. S. Buzbee, Esqr.

[fol. 153] J. C. Cash, of lawful age, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the defendant, testified as follows:

Direct examination.

Questions by Mr. Buzbee:

Q. Mr. Cash, where do you live?

A. I live in Prairie Township, in Arkansas county.

Q. How long have you lived in Arkansas county?

A. Twenty-one years.

Q. Were you ever the Assessor——

A. Yes, sir.

Q. —of Arkansas county?

A. Yes, sir.

Q. During what years?

A. From—the years 1919 to 1923 inclusive, four years, 1919 to 1923.

Q. As Assessor you had charge of the assessment of all lands and other property in the county, for taxes, did you not?

A. Yes, sir—in a way, Mr. Buzbee, if you understand. That is, under the provisions of the Township Boards of the county.

Q. How did you make the assessments of property in those years, just explain that method?

A. Well, I might go a little behind, probably to, before my term as Assessor; Mr. Montgomery was the Assessor, and these Boards could come in and they established, as [fol. 154] I understand it, the valuations of prairie and

timber lands—with the timber lands. At that time, in 1919, they assessed prairie lands at twelve dollars and a half an acre without improvements, and timberlands at five dollars an acre, and I adopted that plan when I was made Assessor to follow Mr. Montgomery; throughout the county it was assessed that way the best—as nearly as we knew how.

Q. Now how did you make assessments with the Township Boards, explain that system?

A. Well, whenever we came to any piece of land, and so forth—Now, most of all the parties, that is, the residents here, they met with us at our assessment places, you know, and if they didn't, why, they were supposed to have—to send a representative where these boards of the township met. But they didn't always come, and we made the assessment of these lands as nearly equal on all the timberlands as we could.

Q. You were endeavoring to assess all timber lands as nearly equal as you could?

A. As nearly equal as we could, yes, sir. Now, there were some swamp lands that had but very little timbers on them that were assessed down as low as two dollars and a half an acre, and some were raised a little higher where they claimed that the timbers were better.

Q. Now, did you use the same method in making the assessment of other property in the county?

[fol. 155] A. As nearly as I knew how and as these boards advised.

Q. What effort, if any, did you make to get all property in the county assessed on an equal basis——

A. Well——

Q. —that is, a uniform basis?

A. That is just as I said in the beginning, you know, that those valuations were established by these members of these boards over the county, that they made all assessments as I understood it. Well, then in—I am not positive whether it was 19—I think it was 1921, there was one township in this county that raised lots of these timber lands to ten dollars an acre—well, that was the Arkansas Lumber Company, and Mr. Gibson and Mr. Burnett were representatives of that Company here and they made a protest. Well, you see, these—the assessors are supposed to

call the county board to meet here on or about the twentieth of August, and I recall that they came in with their protest and there was a motion made before this board to appoint a man—they claimed—several claimed that these assessments were not right—and that they appoint a man to go over these books and to equalize all these assessments. And they appointed Mr. E. J. Spratlin and he changed a good deal of our assessments that year, but how much, I don't know.

Q. That was done under the supervision of the Board?

A. Yes, sir.

[fol. 156] Q. And that was an effort to make the assessments uniform?

A. Uniform, yes, sir, all over the county, in these timber lands. And he was supposed—he had been in the real estate business here for many years and he was supposed to know more about the values of these timber lands than any other man, and he was appointed and did over and tried to equalize all these assessments.

Q. Now, was there any discrimination as between these timber lands and prairie lands, rice farms and so on, in the manner of assessment?

A. Nothing, as I—except as I told you in 1919 we assessed the prairie lands at twelve dollars and a half an acre and the timber lands at five.

Q. That was on the theory that the prairie lands were—

A. Worth that.

Q. —were worth considerably more than the timber lands?

A. Yes, that is, the raw land, you know. We assessed the land on our tax books—we assessed the raw lands at so much and then the improvements at so much and then totaled the amount; the timber lands were assessed in the same way where there were improvements on them, but where there was no improvements on them they went straight.

Q. Well, is it a fact, Mr. Cash, that during your term of office, regardless of the basis of values used in making assessments, that you and your boards endeavored to assess the property of the county on as near a uniform basis as possible?

A. Yes, sir.

[fol. 157] Q. You think you did that?

A. Did it as near as I knew how. And then a great deal of this non-resident land, which is mostly timber land, of course, there was no one there to meet us at the assess —at our assessment days, and I just entered that on the book as it was prior to my——

Q. Your township?

A. —incumbency.

Q. —boards were composed of men who lived in the township and were familiar with the lands?

A. Familiar with the lands, supposed to be, yes, sir. There were two men; generally the Justices of the Peace of the Township were appointed on my board, but they were not always. Sometimes when one that was appointed didn't come, then I appointed a man, myself, and swore him in in their stead, a man who lived in the township and supposed to be familiar with it.

Q. Do you know about what basis of valuation, that is, what percentage of actual value property was assessed at during those years?

A. I couldn't say the actual value, but not exceeding, I would suppose, thirty to thirty-three and a third valuation. Their valuation, it was supposed to be fifty per cent, but I don't think any of it was assessed above a third.

Q. That is, any of the property in the county?

A. Yes, sir; as a whole; and I think a good deal of it [fol. 158] less than that, at the value at that time.

Q. Well, your principal efforts were to make the values uniform?

A. Uniform as a whole, yes, sir.

Mr. Buzbee: I believe that is all.

Cross-examination.

Questions by Mr. Rose:

Q. Mr. Cash, you stated you were Assessor from the years 1919 to 1923?

A. Yes, sir.

Q. And you stated that you assessed these timber lands at five dollars an acre; well, what year was that?

A. In 1919 is the best of my recollection, Mr. Rose.

Q. What was it assessed at after that?

A. I think probably at four dollars in 1921, on account of the slump, the whole property—timber lands, prairie lands and everything, on account of the 1920 slump.

Q. You stated you just followed the plan that had been adopted by the preceding Assessor, did you not?

A. Yes, sir.

Q. And assessed the timber lands at five dollars and subsequently at four dollars an acre?

A. Yes, sir.

Q. Now, how many acres of timber lands are there in Arkansas county, have you any idea?

A. Well, sir, I expect there is—it is pretty near divided half and half, but I couldn't tell just how much.

[fol. 159] Q. How many—approximately, how many acres are there in the county?

A. I can't say, Mr. Rose, I have seen the figures, but I can't say.

Q. There is an erroneous amount of timber lands?

A. Yes, sir, there is a big lot of timber land in this county.

Q. Some of that timber land—or rather, the vast or greater portion of it is cut-over land, is it not?

A. That is my understanding. I have never been all up and down the river bottoms.

Q. Isn't it a fact that there are only a few of the extremely large tracts that have virgin timber on them?

A. Well, now, I am told there is a good many of those that have virgin timber on them. Take the Melvin Jones land on the Arkansas River, they tell me there is fine timber on that.

Q. Well, you assessed those lands——

A. And the Storthz timber.

Q. —at five dollars an acre, that is, timber lands, as a class, did you not?

A. Yes, sir.

Q. You didn't take into consideration whether it had valuable timber or cut-over timber?

A. No, sir.

Q. You didn't know that, did you?

A. No, sir.

Mr. Buzbee: Let him finish that statement. He said it was left to——

[fol. 160] Mr. Rose: All right. Left to whom?

A. To the Township Boards.

Q. Are you familiar with the lands and the timber belonglonging to the defendant in this case, the White River Lumber Company?

A. No, sir; I am not.

Q. Have you ever seen it?

A. Not that I know of. I have been up and down these rivers some, but I don't know the land.

Q. If you were taken out on a tract of timber land could you look at that timber and tell how much was on it?

A. I couldn't.

Q. You couldn't do that?

A. Because I am not a lumber man.

Q. What is the average assessment in this county?

A. The average?

Q. The average assessment? You were required by the Railroad Commission—or, the Tax Commission——

A. Yes, sir.

Q. —to assess all property at fifty per cent, were you not?

A. Yes, sir.

Q. You got a certificate so directing, didn't you?

A. Yes, sir.

Q. And what did you—For instance, if any——

A. In——

Q. Wait a minute?

A. Go ahead.

Q. If a tax payer would turn in a piece of property that [fol. 161] he said—came and told you that property was worth a hundred thousand dollars, and your office would find out to your own satisfaction that property was worth a hundred thousand dollars, what figure would you put that in at?

A. Well, we tried to put it in at fifty thousand dollars.

Q. Fifty thousand. Where you knew the value you out it in at fifty per cent.

A. Yes, sir.

Q. What did the actual values of the county amount to, the values?

A. Well, now, in 1921 it was about thirteen million, the county.

Q. I know, but what per cent of the actual value?

A. Well, now, I can't say, Mr. Rose, because I don't know. I know there was lots of this land that was contracted here when we were assessing it for twelve dollars and a half an acre that was contracted for fifty dollars and acre, but there was lots of that contracted been forfeited since.

Q. But you attempted to get fifty per cent where you could?

A. Yes, sir.

Q. And you said to Mr. Buzbee, I believe, that it would average about thorty-three and a third per cent?

A. I don't think it would average over that, any of it, prairie or timberland.

Q. But it would average about that amount, though?

A. I expect so.

[fol. 162] Q. Now, Mr. Cash, you stated the boards—Township Boards assessed these lands?

A. Yes, sir.

Q. Did they assess all the lands of the White River Lumber Company?

A. In their respective townships.

Q. How much of it did you assess, yourself?

A. Well, now, I couldn't say that, but there was quite a bit of it that I put on. I just copied the books like it was given to me on the books before.

Q. You didn't make any attempt to get at the actual value, but just put it back on the books——

A. Put it back on the books, supposing that my predecessor had given it correct.

Q. It would have been impossible for you to have gone over the eighteen thousand five hundred acres of land?

A. Why, of course so.

Q. Isn't it a fact that most of the valuable timber is owned in large tracts and just by a few parties and corporations?

A. Well, there is some few individuals that have good, valuable timbers, but then some that haven't.

Q. But the majority of it is owned by corporations and lumber companies, is it not?

A. Well, except for non-resident parties; there is a good deal of non-resident parties such as Storthz and Anderson-Tully——

[fol. 163] Q. Well, Anderson-Tully is a corporation?

A. Well then—then Dave and Melvin Jones, he has a big lot on the Arkansas River—Arkansas bottoms.

Q. There is none of them own as much as the larger lumber companies, do they?

A. No, sir.

Mr. Rose: That is all, I believe.

Redirect examination.

Questions by Mr. Buzbee:

Q. Just a moment, while you are not familiar with all these lands, I understand you to say that your Township Boards were?

A. They're supposed to be, yes, sir.

Q. And you sat with them in making the assessment?

Mr. Rose: I——

A. Yes, sir.

Mr. Rose: I object to the question because it is just an opinion.

Mr. Buzbee: It has already been said, anyhow.

Q. Opinions differ very greatly as to the value of real estate, don't they?

A. Yes, sir.

Q. And doesn't the value, itself, in this country fluctuate a great deal, depending on rice conditions——

A. It has in the last six years.

Q. —and timber market conditions?

A. Well, yes, sir, it does, it fluctuates a great deal.

Q. And don't you find—or, didn't you find that the opin-

[fol. 164] ions of men differed greatly about the value of any particular piece of land, too?

A. Well, now, I can't say that there was anything of that kind that would come under discussion with me.

Mr. Rose: Well, he stated he simply entered it on the books as it had been, Mr. Buzbee, he didn't investigate the values of those lands.

Q. You say that the resident people here usually appeared before your boards?

A. Yes, sir; and some of the——

Q. Some of the non-residents?

A. Some of the non-residents, or their agents.

Mr. Buzbee: I believe that is all.

Recross examination.

Questions by Mr. Rose:

Q. Did Mr. Keaton of the White River Lumber Company ever come to you about the assessment——

A. Which?

Q. —of the White River Lumber Company?

A. During my——

Q. Yes.

A. I don't think he did, Mr. Rose.

Q. Now, Mr. Cash, do you know how many thousand feet of timber there are on any of the White River Lumber Company's lands?

A. No, sir; I do not.

Q. You have no idea of the value?

A. No, sir.

Q. You didn't investigate that at all?

A. No, sir.

Mr. Rose: That is all.

Mr. Buzbee: That is all.

[fol. 165] M. F. Montgomery, of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in behalf of the defendant, testified as follows:

Direct examination.

Questions by Mr. Buzbee:

Q. Where do you live, Mr. Montgomery?

A. I live here at DeWitt.

Q. How long have you lived here at DeWitt or in Arkansas county?

A. Born in Arkansas county. I have lived in DeWitt about ten or twelve years, something like that.

Q. Have you lived in Arkansas county all of the time?

A. Yes, sir.

Q. Have you been Assessor of Arkansas county?

A. Yes, sir.

Q. What years?

A. Now, I don't remember. Did you ever look it up, Bill? (After colloquy off the record:) That would be from 1915 to 1919.

Q. You were in office four years just prior to Mr. Cash?

A. Yes, sir.

Q. Mr. Montgomery, what method did you adopt for assessing the property of the county?

A. Well, we had the Township Board proposition; two men of the township and the Assessor would constitute the board, the Assessor being chairman of the Board, and we would just try to classify these lands and assess them, timberlands at a certain rate, prairie lands at a certain [fol. 166] rate, I believe we had a little in probably two townships—we had some overflow land and we didn't assess that quite as much as we did the other. Now, I don't know whether that was before—when was that township board proposition—when was that? I don't believe that was but for the last two years of my office—I am not sure. I don't think we had the Township board proposition the first two years that I was in office.

Q. You did have it the last two years?

A. Yes, sir.

Q. Well, the Statute will show. I don't recall just when that was or——

A. I don't either.

Q. —became effective. In making the assessments, either yourself before the Township Boards were created, or working in connection with them afterwards, did you endeavor to assess all property of the county on a uniform basis?

A. I did.

Q. Did do that, as far as you know?

A. Yes, sir.

Q. You made no effort did you to favor the White River Lumber Company or any other timber owner?

A. I did not.
Q. You did not favor them as far as you know?
A. I did not, no, sir.

Mr. Buzbee: That is all.

[fol. 167] Cross-examination.

Questions by Mr. Rose:

Q. Mr. Montgomery, you stated that in assessing the property of the county you assessed the timber lands as a class, I believe?
A. Yes, sir.
Q. What assessment did you place on it?
A. Well, I don't remember; I couldn't without referring to the records.
Q. It was four dollars an acre, wasn't it?
A. Possibly so; we would classify the hill farm at, say, four or five dollars, and then the better class of farming country we would try to classify it—group it all together.
Q. But you didn't assess any of the timber lands above four dollars an acre, did you?
A. Well, I couldn't say without referring to the records.

Mr. Rose: Well, I would like to get that in.
The Witness: Well, I can't tell.
(Here ensued colloquy off the record.)
Q. Do you recall any of this White River Lumber Company that you assessed—any of the land you assessed above four dollars an acre?
A. No, sir.
Q. Now, Mr. Montgomery, did you make any classifications of timber lands, or did you take it all as a class?
A. We just took it all.
Q. Did you make any investigation to see what was vir-
[fol. 168] gin timber and what was cut-over land?
A. No, sir.
Q. Do you know, or did you know when you were Assessor, how much timber was on that land?
A. I do not.
Q. Or what was the value of the timber?
A. No, sir.

Q. You took the good with the poor and just assessed it all alike?

A. Yes, sir.

Q. Would you know how to estimate the amount of timber on a tract of land, Mr. Montgomery, if you would see it?

A. No, sir, never had any experience in that.

Q. Now, in equalizing those assessments you did the best you could, you stated, but if you had been produced with evidence that any of this land was worth, say, seventy or sixty-five dollars an acre, would you have raised that amount?

A. I would.

Q. Did you have any evidence produced before you of the value of the land at all?

A. Nothing more than just what the Township Board would give at that time, and I am not sure now as to the date, but I think the first two years we used to have the old system of the county board.

Mr. Buzbee: Board of Equalization.

A. Board of Equalization, which would meet here; after the Assessor would make his rounds over the county, then [fol. 169] they would go over the whole book, just three men from different parts of the county would go over the whole thing.

Q. Mr. Montgomery, would it have been possible for the members of the Township Boards to have inspected all these thousands of acres of timber lands personally?

A. Well, hardly.

Q. Hardly possible. Then there was really, then, no attempt to equalize those lands on account of the absence of the—or the impossibility of getting at the actual value of these vast tracts of timber lands, isn't that true?

A. State that question again?

Q. I say it was impossible to equalize the values on account of the impossibility of getting at the actual values of these vast bodies of timber lands?

A. Well, it was impossible in this way: when we made those assessments I just relied on the men in the township for this information, because a man over in the eastern part of the county would know more about that proposition than I would living here.

Q. Have you ever seen these lands of the White River Lumber Company?

A. I don't know whether I have or not.

Mr. Rose: That is all.

Redirect examination.

Questions by Mr. Buzbee:

Q. You followed that same method, did you not, Mr. Montgomery, in assessing farm lands?

[fol. 170] A. Yes, sir.

Q. You didn't undertake to inspect each farm, did you?

A. Couldn't have done it; only had three months to make the assessment in.

Q. You did have on the township boards men who were familiar with the property in their different sections?

A. Men appointed by the county court.

Q. Did you classify the farm lands somewhat along the same lines?

A. Yes, sir.

Q. And cattle and horses and stock of that kind?

A. Had a uniform rate for that, you know. Of course, beef cattle, I would assess those more than the others, but just taking a common herd of cattle, just assessed them so much a head.

Q. You didn't undertake to inspect each cow?

A. Couldn't do it.

Q. Or calf?

A. No, sir.

Q. So that the method you followed in assessing the timber lands was exactly the method you followed in assessing all of the property of the county?

A. Yes, sir—all other personal property, yes, sir, as well.

Q. And in doing that you endeavored, as far as possible, to make these assessments on a uniform basis as concerned values?

A. I did.

[fol. 171] Q. You had all the information before you, didn't you, that the township boards had about the property in the various townships?

A. Yes, sir.

Mr. Buzbee: That is all.

The Witness: Well, there was no information.

Mr. Rose: What information?

A. Just their opinion was all.

Mr. Rose: Did you have any information at all before you?

A. Well, nothing only I just had their——

Mr. Rose: Just their word?

A. Just their word for it, yes.

Mr. Rose (addressing Mr. Buzbee): Is that all?

Mr. Buzbee: That is all.

Recross-examination.

Questions by Mr. Rose:

Q. Mr. Montgomery, what assessment did you place on farm lands, how much per acre?

A. Well, I don't quite understand your question.

Q. Well, Mr. Buzbee asked you if you had followed the same method of assessing farm lands and you said you did——

A. Uh-huh.

Q. You said you placed four dollars an acre on the timber lands as a class, now on the farm lands how much?

A. In all timber farms; but all rice farms, we valued that more than we did timber farms because it would produce more.

[fol. 172] Q. Well, if a tract of land has, say, five or six thousand feet of merchantable timber to the acre it could be worth as much or more than a rice farm, couldn't it?

A. It could be.

Q. Then if you had learned a timber land possessed or contained so much timber you would have raised it, would you not?

A. I certainly would.

Q. And farm land—and farm lands, if you learned a farm was worth more than classified you put—you raised it, did you not?

A. I raised it whenever there was sufficient proof brought to bear.

Q. Now, in town property, if you—did you receive a certificate from the Railroad—or, Tax Commission stating what per cent property should be taxed at?

A. I did.

Q. What per cent was that?

A. Fifty per cent.

Q. Now, if you were given a piece of town or country property and were told that property was worth the reasonable and fair cash value of fifty thousand dollars, what would you have assessed that property at?

A. I would have wanted to assess it at half value, but there is none of them that assessed their property at that value, I am satisfied. While they were supposed to do that but few did do it.

Q. Well, it was just because you didn't know the value [fol. 173] then when you failed to do that, wasn't it?

A. Well, I don't know——

Q. What value would have placed on that property if they had come in and said that property was worth fifty thousand dollars?

A. Well, I would have tried to make the Board see—if it was worth fifty thousan- dollars I would assess it at fifty per cent.

Q. Now, the larger tracts of timber lands in Arkansas county, by whom are they owned, by local people or by foreign people or corporations, lumber companies, or who is the principal amount of the large bodies of timber lands owned by?

A. Well, I expect they were, very probably, some of them owned by corporations, some by individuals, some by local people——

Q. Well, but are not the majority of the large tracts of timber lands owned by just a few parties and a few owners?

A. Well, I really couldn't say, Mr. Rose.

Q. The White River Lumber Company owns nearly twenty thousand acres in the county, doesn't it?

A. I don't know; they have quite a good acreage here; I don't know just what their acreage would be.

Mr. Rose: That is all.

Redirect examination.

Questions by Mr. Buzbee:

Q. Isn't it true, Mr. Montgomery, that the assessing [fol. 174] boards, would not assess property at fifty per cent of its actual value?

A. Yes, sir.

Q. When you state that if you had been—if the parties had come in and told you that the property was worth fifty thousand dollars and you would have tried to assess it at twenty-five thousand dollars, you would have been controlled by the action of the Township Board, wouldn't you?

A. I would have had to, because there was two of them and I was only one and it takes a majority to rule.

Q. It is your opinion, as you stated, I believe, that property hasn't at any time been assessed at an average of fifty per cent of its value?

A. I don't think it has, Mr. Buzbee.

Mr. Buzbee: That is all.

Mr. Rose: What per cent has it been assessed at, Mr. Montgomery?

A. Well, I—I don't know whether it would average a third or not, Mr. Rose, I am not sure; I never figured it out.

Mr. Rose: But you would have assessed it at fifty per cent if you knew——

A. I would try.

Mr. Rose: What was your answer?

A. I would have tried to, yes, sir.

Mr. Rose: That is all.

Mr. Buzbee: That is all. Will you agree to waive signatures?

Mr. Rose: Yes, sir.

(Signature waived.)

[fol. 175] State of Arkansas,
County of Pulaski, ss:

I, Walter Powell, a Notary Public within and for the State of Arkansas, duly commissioned, qualified and acting herein, do hereby certify that pursuant to an agreement of

counsel herein appearing there came before me at the time and place mentioned in the caption hereof the within named J. C. Cash and M. F. Montgomery, who were by me first duly sworn on their oaths to testify the whole truth of their knowledge touching the matter in controversy aforesaid, that they were examined and their examination reduced to writing, and that their several signatures to their respective depositions were, by special agreement of counsel waived, and that their said depositions are now herewith returned.

Given at my office in the City of Little Rock, County of Pulaski and State of Arkansas this 9th day of April, 1926.

Walter Powell, Notary Public. My commission expires August 11, 1928. (Seal.)

Fees of Notary & Reporter, paid by Defendant, $36.40.

Endorsed: #2226. Arkansas Chancery Court. State of Arkansas ex rel. H. W. Applegate, Attorney General, Plaintiff, vs. White River Lumber Co. Defendant. Depositions of J. C. Cash and M. F. Montgomery. Filed in my office Dec. 6th, 1926. Duce Pike, Clerk.

[fol. 176] [Title omitted]

Deposition of A. N. Best, taken on the 6th day of May, 1926, between legal hours, at the office of John M. Rose, Home Insurance Building, Little Rock, Arkansas, before Helen W. Wing, notary public within and for the county of Pulaski and State of Arkansas, duly commissioned and acting, to be read in evidence upon behalf of the plaintiff in the above-entitled cause, now pending in the above-styled court.

Appearances:

For the Plaintiff: John M. Rose, Esqr.

For the Defendant: Buzbee, Pugh & Harrison, by Thos. S. Buzbee, Esqr.

[fol. 177] A. N. Best, of lawful age, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the plaintiff, testified as follows:

Direct examination.

Questions by Mr. Rose:

Q. State your name?
A. A. N. Best.
Q. Where do you live, Mr. Best?
A. In the southern part of Arkansas county; Chester Township.
Q. What business are you in?
A. Why, sort of a stock business; little farming and everything——
Q. You are justice of the peace, too?
A. Yes; and a school director—secretary—president of the School Board, etc.
Q. Are you a member of the township board?
A. I am.
Q. For what township?
A. Chester Township, Arkansas county.
Q. How long have you been a member of the township board, Mr. Best?
A. Five or six years; about as long—as long as they have had—how long—when did they organize?

Mr. Rose: Some years ago—how long ago was that?
Mr. Buzbee: '15—about 1917.

Witness (continuing): About six or seven years, at least.
Q. Mr. Best, did you sit on the township board when it assessed the timber lands of the White River Lumber Com-
[fol. 178] pany in Arkansas County?
A. I did.
Q. What was that land assessed at, do you know?
A. Four dollars an acre.
Q. How did you arrive at that assessment, Mr. Best?
A. Well, we didn't have time to go over the land at all and view it, and we just assessed it about like the other.
Q. Did you assess all of it at four dollars?
A. Yes, sir.
Q. Whether it was virgin timber or cut-over or what not?

A. Yes, all of it. We estimated it and assessed it at four dollars an acre.

Q. Did you assess the virgin lands of the White River Lumber Company at the same that you assessed the cut-over lands in the other parts of the county?

A. Yes, sir; all the same.

Q. What per cent did you assess property in Arkansas county for those years?

A. Just about fifty.

Q. About fifty per cent valuation?

A. From about thirty to fifty per cent valuation.

Q. If you had been told or had sufficient evidence that the value of those lands or of any other lands was sixty dollars an acre, for instance, what valuation would you have placed on them?

A. About fifty per cent; about thirty dollars. If it was worth sixty, put it about thirty.

[fol. 179] Q. Then your failure to put this land, any of it, at above four dollars an acre was due to what fact?

A. I didn't understand you.

Q. Why was it you didn't place any of this land at a higher value than four dollars?

A. I didn't view it and didn't know where it was.

Q. You didn't go over it?

A. No; I didn't see it. I didn't know whose it was.

Cross-examination.

Questions by Mr. Buzee:

Q. What township is it that you are on the board?

A. Chester.

Q. You only sat in the assessment of the lands in that township, did you?

A. Yes, sir.

Q. How long have you lived there?

A. About twenty-five years.

Q. Are you rather familiar with that section of the country?

A. Why, yes, sir; pretty familiar with it, but there's a whole lot of land on the river—I live on the prairie, you know, and the timber land, most of it, is on White River and

Arkansas—I own land down there I haven't seen for fifteen years.

Q. Is that timber land you own?

A. Yes, sir.

Q. Why don't you see it.

A. Well, I've got a boy, for one reason, about twenty years old, about *th*enty-three years old, and he looks after [fol. 180] it for me some.

Q. Its rather inaccessible, isn't it?

A. Why, I don't know—I couldn't say it was——

Q. But its hard to get to?

A. Yes, I couldn't get to it down in there, and I'm not a timber man; in fact, I haven't seen it for about fifteen years.

Q. How much was it assessed—that land of yours?

A. I don't recollect exactly, unless I had my tax receipt.

Q. Was it over four dollars an acre?

A. I don't think it was.

Q. All the timber, I suppose, about four dollars an acre?

A. About like the other.

Q. You assessed the White River Lumber Company lands on the same basis that you assessed other property in the township, didn't you, so far as you knew?

A. Yes, that's what we done. We done it by the tax books. We estimated it. I looked at it this way—I didn't know that some had been cut-over—didn't know whose it was—just done what was just.

Q. You didn't undertake to favor the White River Lumber Company?

A. No, sir.

Q. So far as you could, acting with the other members of the board, you assessed all property in your township on about the same basis?

[fol. 181] A. Yes, sir; that's what I tried to do, to discharge my duty.

Q. You didn't see all the land?

A. I didn't see it—some of this land—some had been cut over and some—just put it four dollars all the way through. didn't see all the other property.

Q. You didn't undertake to make a critical examination of all the property you assessed?

A. No, sir.

Q. So far as you know now, wasn't that assessment made on about the same basis as the assessment of other property was made?

A. Yes, sir; as the other land. That's what we assessed it at. I didn't know nothing about the land. We did what we thought was right.

Q. How large is the township?

A. Oh, its a pretty good sized township.

Q. About six miles square?

A. Yes, sir; that's what it is.

Q. You are rather familiar with conditions in that township?

A. I am with the prairie lands, all of it. We have a right smart prairie lands in that township—good deal down in the bottoms—not familiar much in the bottom lands. I don't go down there.

Q. You have a general knowledge of the kind of land, the timber that grows there?

A. Yes, sir.

[fol. 182] Q. You couldn't hardly live that close to it for that long without knowing something about it, could you?

A. No, sir; I never went out and examined it.

Q. You never cruised it and ran out the lines?

A. That's what I mean.

Redirect examination.

Questions by Mr. Rose:

Q. Mr. Best, you were asked by Mr. Buzbee as to the assessment of your own land and you stated at four dollars an acre. What value do you place on your lands?

A. About eight dollars.

Q. They were worth about eight dollars?

A. Yes, sir; about that.

Q. If this land of the White River Lumber Company was worth sixty or seventy-five dollars an acre that would not be a uniform assessment, would it—with your land?

A. No, sir.

Q. Have you an automobile, Mr. Best?

A. Yes, sir.

Q. What kind?

A. Ford.

Q. What did you pay for it?

A. Why, about five hundred and five dollars.

Q. How much did you assess that for?

A. Two hundred and fifty dollars.

Q. You assessed it on the tax books for two hundred and fifty dollars?

[fol. 183] A. Yes, sir.

Q. Mr. Buzbee, here, asked you about the method of assessing and attempted to show that you assessed all the property in the county alike. What method did you use in assessing these timber lands? Did you make an investigation as to the value or did you adopt the figures formerly on the books?

A. Yes.

Q. You adopted the figures formerly on the books?

A. Yes, sir.

Q. Do you know now the value of these timber lands of the White River Lumber Company?

A. No, sir; I do not.

Q. Are you a timber man? Do you know anything about the value of timber?

A. No, sir.

Q. Could you, if you had inspected those lands, have estimated the number of thousand feet to the acre?

A. No, I couldn't.

Recross-examination.

Questions by Mr. Buzbee:

Q. Is your land timbered land?

A. Yes, sir.

Q. Has it been cut-over?

A. Yes; my boy cut some of it.

Q. And some is not?

A. Most of it, yes, sir.

Q. How much land have you down there?

[fol. 184] A. Oh, its indifferent spots; not but about eighty acres in one spot. No; one hundred and sixty acres in one spot.

Q. How much of the bottom timbered land?

A. I believe something over two hundred acres.

Q. When was that cut over?

A. Part of it was cut seven years ago and part of it as late as five years ago.

Q. How many other members on your township board?

A. One other; two members—assessors.

Q. How long has the other member of your board lived in the township?

A. Born there. So was his mother.

Mr. Buzbee: That is all.

Mr. Rose: That is all.

(Signature waived.)

Witness excused.

[fol. 185] STATE OF ARKANSAS,
County of Pulaski, ss:

I, Helen W. Wing, a Notary Public within and for the County of Pulaski and State of Arkansas, duly commissioned and acting herein, do certify that, pursuant to an agreement between the respective counsel herein appearing, there came before, at the office of John M. Rose, Home Insurance Building, in the City of Little Rock, Pulaski county, Arkansas, the within named A. N. Best, who was by me first duly sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to typewriting, his signature waived, on the date, between the hours and at the place in that behalf first set forth; his said deposition is now herewith returned.

Given under my hand and seal in said city, county and State, this the 6th day of May, 1926.

Helen W. Wing, Notary Public. My commission expires March 21, 1929. (Seal.)

Endorsed: Filed in my office, January 28th, 1927. Duce Pike, Clerk.

[fol. 186] [Title omitted]

Deposition of a witness produced, sworn, and examined on the sixth day of April, 1926, between legal hours, in the

Arkansas County, Southern District, Court House, in the town of De Witt, Arkansas, before Walter Powell, a notary public within and for the state of Arkansas, duly commissioned, qualified, and acting, to be read in evidence upon the part of the plaintiff in the above-styled cause now pending in the above-named court, all pursuant to agreement of the respective counsel herein appearing.

Appearances:

For the Plaintiff: John M. Rose, Esqr.
For the Defendant: Buzbee, Pugh & Harrison, by T. S. Buzbee, Esqr.

[fol. 187] F. E. STEPHENSON, of lawful age, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the plaintiff, testified as follows:

Direct examination.

Questions by Mr. Rose:

Q. What is your name, please?
A. My name?
Q. Yes.
A. F. E. Stephenson.
Q. Where do you live, Mr. Stephenson?
A. St. Charles.
Q. In Arkansas county?
A. Yes, sir; in Arkansas county.
Q. How long have you lived there?
A. All my life—that is, I have lived in Prairie Township; I have lived in the lower end of it 'til about six years ago.
Q. You are the Assessor of Arkansas county, are you?
A. Yes, sir.
Q. How long have you been Assessor?
A. This is my fourth year; 1926 is my——
Q. You went in then in 1922?
A. 1922, yes, sir.
Q. Mr. Stephenson——
A. No. 1923, 1923, 1924, 1925 and 1926.

Q. 1923. Mr. Stephenson, did you assess the property, the timberlands of the White River Lumber Company in Arkansas county——

[fol. 188] A. I did.

Q. —for those years?

A. Yes, sir, for two years I did, 1923 and 1925. Now, of course, that is copied.

Q. Now, did you assess in 1924?

A. Not real estate.

Q. You don't assess real estate——

A. Every other year.

Q. Now, what was your manner of assessing?

A. Well, 1924?

Q. In 1923?

A. 1923 it was—it had all been assessed, and you know the tax book—or, the assessment book is made out, the old value is there, so the assessing board—Mr. Dupeer over there was one of the board, and some of the others that had been on the boards with the former Assessor, Mr. Montgomery, told me that they had taken four dollars as a basis for timberlands and ten dollars for prairie lands; so they said they thought that was a fair value and was the basis that they had taken, and unless we knew something different, some cause for it being decreased or increased, we left it at the old value.

Q. What did you do as to this land of the White River Lumber Company?

A. I placed it back just like it was; there might have been some few changes. Mr. Keaton told me that they were satisfied with it and thought it was about right.

[fol. 189] Q. Who is Mr. Keaton?

A. He is manager for the White River Lumber Company. And the assessing board also told me the same thing, so I placed it back just about—it might——

Q. Mr. Keaton told you that he thought it was all right?

A. Yes, sir.

Q. Did you make any inspection of those timber lands?

A. No, sir; never did.

Q. Have you ever seen any of it?

A. Well, not that I know of. I have been in the bottoms some, you know, and I might have been on some, but I

wouldn't have known whether it was the White River Lumber Company's or others.

Q. Would you know how to estimate the amount of timber, the number of thousand feet——

A. Not standing, no, sir.

Q. You couldn't if you were taken through to estimate the value?

A. No, sir, I wouldn't know.

Q. So you just followed the figures that had been put by the former Assessor?

A. Yes, sir.

Q. Mr. Stephenson, what is the average assessment for—first I will ask you, has the Railroad Commission sent a certificate here requiring any per cent?

A. Fifty per cent.

Q. You have received that each year?

A. Yes, sir.

[fol. 190] Q. And what has been your method in assessing?

A. Well I have assessed, and I might think at the time I was assessing I would get about fifty per cent, but some time later I would find out I was wrong. But where I absolutely knew anything of it I have tried to go on the fifty per cent basis. But some will tell you that they think it only about twenty-five, some thirty-three and a third per cent.

Q. And you have endeavored to get fifty per cent, then, where you knew the value?

A. Where I absolutely knew it, yes, sir.

Q. In other words, if you were given a piece of property in the Town of De Witt or in the Town of Stuttgart, or a piece of farm land, and you were told that property was worth fifty thousand dollars, the fair cash value, what would you assess that land at?

A. Well, now, there is a lot of times with the Assessing Board—sometimes they would say, you know that they built it at a cost greater than it should have been.

Q. I know. But the present value. Not the cost, but the present value is fifty thousand dollars after allowing for depreciation and everything else that should be allowed for, what would you have put it?

A. Well, to allow for depreciation and everything, if it was fifty thousand dollars, why, I believe that about one-third would be near about what it would be, of the first value, the fifty thousand dollars.

Q. Well, I mean of the present value. Then, if you were [fol. 191] given a present value, after allowing for depreciation——

A. And at fifty thousand dollars?

Q. At fifty thousand dollars at this time.

A. Well, I would assess it somewhere about twenty or twenty-five thousand dollars.

Q. The average assessment over the county, what is the average assessment?

A. Well, I would think about thirty-three and a third.

Q. Some goes higher and some lower, does it?

A. Yes, sir; some times.

Q. And the average would be——

A. Something like that, yes, sir.

Q. Mr. Stephenson, who owns the greater part of the valuable timber lands in Arkansas county, if you know? Is it the corporations or the local merchants, or who is it?

A. Well, sir, I should think the White River Lumber Company and Mr. Storthz and Anderson-Tully.

Q. Anderson-Tully Company?

A. Yes, sir; and there is some company up here, it used to be—I don't know whether it is the Long Bell Lumber Company, or not, that owns lands up and down Bayou Meto here, and the Wrape Lumber Company—and I don't remember. I believe they are about the biggest land owners, that is, of the timber lands.

Q. Then this timber land has just been assessed as a class, as I understand you to say?

[fol. 192] A. Yes, sir, all about the same—with one exception; there is some land up in there on Bayou Meto that belongs to this Company that I just spoke of——

Q. What company?

A. Long Bell, used to be—it seems that they have sold that, but it was the Long Bell Lumber Company, and we raised that to ten dollars an acre this last year from, I think six, because there is none of the timber been cut off of it they say up there, and I notified them of the raise and they didn't kick on it; they sent me a list of their land and

what it had been assessed at, and I just put opposite that what it was raised to.

Q. Do you know whether—or, how much of the White River Lumber Company lands have been cut off of?

A. No, sir; I do not. I know there has been a lot of it, because they have been cutting over there for five or six years.

Q. Then you don't actually know what any of this land of the—or, how much timber is on any of this land?

A. No, sir; I wouldn't have any more idea than you would.

Mr. Rose: That is all.

Cross-examination.

Questions by Mr. Buzbee:

Q. Mr. Stephenson, you made your assessments in connection with the Township Boards, did you not?

A. Yes, sir.

Q. They are composed of citizens from each township?

A. Yes, sir.

[fol. 193] Q. Are they citizens who are familiar with the lands and property in these townships?

A. Well, one man has been there ever since I can remember, one of the board. In 1923, let's see, I had—the other one had been there for some ten or fifteen years, but I expect they were about alike, I doubt if they had been on the land—they might have been, I can't say about that. And then this last year one of the same men helped me that helped the first year I had another man that has been there for ten or fifteen years, on the board.

Q. You followed the same system all over the county in working with the Township——

A. Yes, sir.

Q. —assessing boards, don't you?

A. Yes, sir.

Q. Now, what effort did you make with those boards to equalize the assessments over the county, that is to say, to assess property on the same general basis?

A. Well, we took this four dollars on an acre as a basis. And you know when they started out with the Township

Boards it seems that they all had established that as a basis, four dollars for timber lands and ten for prairie lands, that is, it had been that before I went in, and we just used about the same basis, like we did on cattle or stock of that kind.

Q. That is to say, you found no reason to change it?

A. No, sir.

[fol. 194] Q. Wherever you or the assessing Boards found occasion to make changes you made them?

A. When we knew it, yes, sir.

Q. Did you and the Boards make an effort, was it your purpose to assess all property in the county on about the same basis?

A. Yes, sir.

Q. You did that as far as you know?

A. As near as I could. Sometimes you will strike a Township board, like on the valuation of stock or anything, some boards will just want to put it some lower and some higher; and you can tell them, but they have the right to change the list, you know, after a man makes his assessment, and sometimes they lowered the assessment after a man assessed, sometimes they would raise it.

Q. Nearly all of the timberlands along White River are overflow lands, aren't they?

A. Yes, sir; practically all of them.

Q. They are not fit for cultivation?

A. No, sir.

Mr. Buzbee: I believe that is all.

Redirect examination.

Questions by Mr. Rose:

Q. Mr. Buzbee asked you about the township boards being familiar with lands; would it have been possible for all the member of the township boards to cover all these timberlands?

A. No, sir, hardly possible—and if they had, I think they [fol. 195] are men like myself, they wouldn't hardly have known how to estimate the timber.

Q. Now, in equalizing these assessments, you stated you tried to get at an equalization by assessing all the timber-

lands at four dollars an acre; you did that in the absence of knowing what the actual value was, did you?

A. Well, at the time I was doing that I thought that that must be about right; it seemed that that had been satisfactory and I thought that was about——

Q. You just followed the method——

A. Yes, sir.

Q. —of the former Assessor?

A. Yes, sir.

Q. Now, if you had had some convincing evidence produced to show you a timber land was worth, say sixty-five dollars an acre, would you have raised that timber land?

A. Yes, sir.

Q. But you didn't have any such evidence?

A. No, sir.

Q. Did you have any evidence at all?

A. Didn't have any evidence, only just what—what I was told, you know, by others; some would tell you it was enough.

Q. And you made no inspection?

A. I had no real evidence.

Q. You didn't know about what the value was?

[fol. 196] A. No, sir; no more than Mr. Keaton told me—I talked to him about it.

Q. That is the White River Lumber Company man?

A. Yes, sir. And we had heard that it had been assessed at more than that in Monroe county and felt like if it was right to assess it more here, if they had as good timber. So I sent Mr. Keaton word about it—he wasn't down there at the time I was assessing real estate—Mr. Ramsey, his agent, was there and he assessed their personal property, but the other—and Mr. Keaton called me up over the phone out here and I talked to him about it and he told me he thought that was a fair value, four dollars an acre.

Q. Then you followed the advice given you by the former Assessor and Mr. Keaton——

A. Yes, sir.

Q. —of the White River Lumber Company?

A. And the township boards, yes, sir.

Q. Now, you did all this, did you, yourself, personally?

A. All this real estate.

Q. Yes of the White River——

A. Did I put it down on the assessment book, you mean?

Q. Some, now, I understand, was assessed by the Board and some by you?

A. Well, you see, they way that was, I would have the book, and the Board around, and we would just agree on a certain price and, of course, I put the figures down on all of it.

[fol. 197] Q. Now, some — it the township board didn't appraise, did they?

A. Well, now, take like the White River Lumber Company, it would take so long if you took every separate tract, and they just agreed on an average of four dollars an acre, so I just extended the figures out—figured it out about that way, some maybe a little less, where you strike a place that you know is swampy and nothing on it—it would'nt be right to assess it at that—some maybe a little more. But four dollars was the basis.

Mr. Rose: That is all.

Recross-examination.

Questions by Mr. Buzbee:

Q. You had, I believe you stated, Mr. Stephenson, the help of the township boards, and then you also stated, as I understood, that people would tell you different things about it—that is, you talked with different people about valuations?

A. Well, I just heard them talking about it. Probably after I was through they would discuss it. Since this has come up, you know, I have heard different ones talk about it, but I still wouldn't know how to make it, because some will tell you one thing and some another.

Q. Well, that is nearly always true as to the valuation of property, isn't it?

A. Yes, sir.

Mr. Buzbee: I believe that is all.

[fol. 198] Redirect examination.

Questions by Mr. Rose:

Q. Did you make any investigation at all, except taking these figures of the former Assessor and talking to Mr. Keaton, for the purpose of assessing the property?

A. And with the township boards——

Q. Yes.

A. —is all. That is, with theirs.

Q. That is all.

A. Sometimes some other people, you know—if I was to hear something I might make an investigation—have done it.

Q. But you didn't with the White River Lumber Company?

A. Not on that White River Lumber Company.

Q. That is all.

The Witness: Now, wait a minute. I did write the assessor—I started to tell you that while ago—when I heard what it had been assessed in Monroe county I wrote the Assessor of Monroe county about this. That is what we agreed on, the Township Board and myself, in regard to this land, that I would write to him about it and if it had been assessed up that high we would raise it, because we didn't——

Q. Up how high?

A. To seventeen dollars and a half an acre; that is what we had heard—just hearsay. So I wrote to the Assessor of Monroe county and didn't hear from him for a long time, and finally I got a letter from him—after I had talked to you—you know—and I think I have the letter at home—and I believe he said about five dollars an acre was what they had it.

[fol. 199] Q. What, cut-over land, or seventeen dollars and a half for the virgin timber, is that?

A. Well, he didn't say anything about that. We was just talking about last year.

Q. Well, don't you know as a matter of a fact that they did raise the virgin timber to seventeen dollars and a half an acre——

A. Last year?

Q. In 1923?

A. No, sir, I don't know. It was just hearsay, all of it, with me. I never saw their assessment book——

Mr. Rose: That is all.

A. —or anything.

Mr. Buzbee: That is all.

Mr. Rose: Will you waive this signature.

Mr. Buzbee: Certainly.

(Signature waived.)

[fol. 200] State of Arkansas,
County of Pulaski, ss:

I, Walter Powell, a Notary Public, within and for the State of Arkansas, duly commissioned, qualified and acting herein, do hereby certify that pursuant to an agreement of counsel herein appearing there came before me at the time and place mentioned in the caption hereof the within named F. E. Stephenson, who was by me first duly sworn on his oath to testify the whole truth of his knowledge touching the matter in controversy aforesaid, that he was examined and his examination reduced to typewriting, and that his signature to his said deposition was, by special agreement of counsel, waived, and that his said deposition is now herewith returned.

Given at my office in the City of Little Rock, County of Pulaski and State of Arkansas this 9th day of April, 1926. My commission will expire August 11, 1928.

Walter Powell, Notary Public. (Seal.)

Fees of Notary and Reporter, paid by Counsel for plaintiff, $16.00.

Endorsed: Filed in my office January 28th, 1927. Duce Pike, Clerk.

[fol. 201] [Title omitted]

Deposition of witness produced, sworn, and examined on the 24th day of September, 1926, between legal hours, at the office of John M. Rose, Home Insurance Building, Little Rock, Arkansas, before Helen W. Wing, a notary public within and for the county of Pulaski and State of Arkansas, duly commissioned and acting herein, to be read in evidence upon behalf of the plaintiff in the above-entitled cause, now pending in the above-styled court, all formalities in the taking and transmitting of said deposition being waived, exceptions saved as to the competency, relevancy, and materiality of the evidence.

Appearances:

For the Plaintiff: John M. Rose, Esqr.

For the Defendant: Buzbee, Pugh & Harrison, by Thos. S. Buzbee, Esqr.

[fol. 202] S. B. Dennison, of lawful age, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the plaintiff, testified as follows:

Direct examination.

Questions by Mr. Rose:

Q. State your name, please?

A. S. B. Dennison.

Q. Where do you live?

A. Stuttgart.

Q. You have formerly testified in this case?

A. Yes.

Q. Mr. Dennison, how long have you lived at Stuttgart?

A. I have lived at Stuttgart a little over four years.

Q. Where did you live?

A. At St. Charles. I lived at St. Charles about twenty years.

Q. I believe you have already testified as to your familiarity with the lands involved in this suit?

A. Yes, sir.

Q. Are you acquainted with all of these lands?

A. Yes. I have been over them; all up in Arkansas county and a lot in Desha. I never was in——

Q. How about Big Island?

A. Yes; I have been there lots of times.

Q. Have you been on there recently?

A. Yes, sir. I was on Big Island two days of this week.

Q. Two days this week?

[fol. 203] A. Yes, sir. I have been there lots of times.

Q. Have you made any purchase of timber lands?

A. On Big Island?

Q. Well, anywhere in Arkansas county?

A. Yes.

Q. Are you in that business?

A. Yes, sir; I have been in it.

Q. Mr. Dennison, I wanted to take your testimony today to explain and to rebut testimony which has been taken in this case of Mr. W. W. Keaton of the White River Lumber Company. Mr. Keaton, on page 4 of the deposition taken by defendant, was asked this question: "How does the timber land of the White River Lumber Company compare with the other timber lands of the county?" Mr. Keaton answered, "As a whole it is about the same average kind of timber land." State whether that is true or not?

A. Well, there's some other lands that's not as good as the White River Lumber Company's lands.

Q. But as a whole?

A. And there's some as good as theirs is, in Arkansas county, but there's no large tracts there in Arkansas county that I ever saw that was as good as the White River Lumber Company's.

Q. Have you seen the majority of the lands—the timber lands—in Arkansas county?

A. Its practically all timber lands in Arkansas county. Now there's timber land on the west side—Bayou Meto, that I never was on, but in the river—in the White River [fol. 204] bottoms country, I have been on practically all the timber lands there.

Q. What per cent of the timber lands does that include, with which you are familiar?

A. I expect three-fourths of the timber lands in Arkansas county. I don't know just how much is on the west side, nor how good it was. I have never been on that next to the railroad in Bayou Meto bottoms

Q. How do the White River Lumber Company's lands compare with the average timber lands of the small owners?

A. Well there's some—there's no samll owners any more, that I know anything about at all.

Q. Is there any cut-over lands owned by the——

A. Might be. But its all been cut over that I know anything about. Its all owned——

Q. What is the value of the cut-over timber lands owned by the small owners?

A. Haven't got much value; not much value after the timber has been cut off.

Q. What is it worth?

A. Well, there hasn't been any of it sold that I know anything about; know definitely about.

Q. Is there any demand for it?

A. No, sir.

Q. Which is more valuable, small tracts or large tracts?

A. You mean cut-over?

Q. Well, any kind.

[fol. 205] A. Well, I think the virgin land—the large tracts; they're more valuable than the small.

Q. Why?

A. More of it in a body can be handled easier. You could interest people more in a large tract than in a small tract.

Q. Now, Mr. Dennison, on the same page, page 4, of this deposition, Mr. Keaton was asked this question: "Are you familiar with lands in Arkansas county originally owned by W. P. Porter and sold by Porter to S. B. Dennison, H. F. Linder and J. M. Linder, in 1920?" Mr. Keaton answered "I am." He was then asked, "What character of land is that and how does it compare with the White River Lumber Company lands?" Mr. Keaton replied, "This Porter tract of land was very good timber. In fact, I think it was as good a tract of timber as I ever saw." And on page 5 he says, "I would say that it is more valuable than any tract the White River Lumber Company owns." Mr. Dennison, explain what—how that would compare in value to the White River Lumber Company's land?

A. Well, the White River Lumber Company has a whole lot of land that—we cut the timber off the Porter land and

it cut about six thousand feet per acre, and the White River Lumber Company land joins—adjoins it on the east in several places, and they had land laying east and north and it had fine timber—a great deal better than the Porter land.

Q. As a whole?

[fol. 206] A. It would be as good as that timber land in the neighborhood.

Q. How does the land of the White River Lumber Company on Big Island compare with that?

A. Big Island's better. It's the best tract in that whole country.

Q. Mr. Keaton stated that all of the White River Lumber Company's lands overflowed. Is that true or is it not true of other lands in the county?

A. Most all timber lands overflow. If the White River has any that don't overflow, I don't know it.

Q. Most all of the other overflows?

A. Yes, in fact, all of it does.

Q. On page 6 of the deposition Mr. Keaton was asked by counsel for the defendant to explain how the Storthz land in Arkansas county compared with the lands of the White River Lumber Company. He answered, "It is just about like the White River Lumber Company's tract as a whole." Are you familiar with the Storthz land?

A. Yes, sir; I have been over it.

Q. How would you say it compared with the White River Lumber Company's land?

A. A good many years ago, before Mr. Storthz owned it—it sold recently—the Webber-Ferrell people owned it and put in a mill. They cut over a lot of this land, and they left a great many logs, I think three or four million feet, that rotted. All that was practically cut over a good many years ago.

[fol. 207] Q. And how does the land compare with the White River Lumber Company's land?

A. That wasn't very valuable. It didn't have any timber on it. Thousands of acres never had any timber. That's way down the river and in that low, flat country there's not any timber.

Q. What did that sell for?

A. I don't know.

Q. How would it compare in proportion to the White River Lumber Compan-'s Big Island tract?

A. Now Storthz had some land that had good timber on it, but you are speaking of this that sold the other day to the Thane Lumber Company?

Q. Yes?

A. Well, they bought the land that lays there in six-one or six-two. Now that's in the country where that mill is at and where that timber has been cut off a good many years ago. However, there's some good timber on a few hundred acres.

Q. How would that land compare in proportion to the Big Island tract?

A. I don't think that down there is worth anything like a fourth—at the time it sold.

Q. How does it compare with the other land of the White River Lumber Company?

A. Now what they own has been cut over.

Q. In the last few years?

A. Last four or five years. They had land up there that was lots better than the Storthz land—down in the Lagrue [fol. 208] country.

Q. Then you would say the Storthz land is less valuable than any of the White River Lumber Company land?

A. Yes, sir.

Q. On page 7 of Mr. Keaton's deposition he was asked by his attorney about the land sold by J. T. Wylie to S. M. Bush in January, 1924, and stated that he was familiar with it and that it was a much better tract of land than the White River Lumber Company's entire tract.

A. Well, I helped make that deal for Mr. Wylie and Mr. Bush and I don't thing it's a better tract of land, but it is a good tract of timbered land and lays in the same vicinity and joins in several places the White River Lumber Company's land.

Q. Do you refer to the land on Big Island or the other land in the county?

A. They had only a small piece on Big Island. They cut about—they got about forty-five acres and they cut about 330,000 feet approximately, off of the forty-five acres on Big Island.

Q. You say its about the same value as the White River Lumber Company's land. Do you mean it's the same value as the White River Lumber Company's land as a whole or on Big Island?

A. I would say as a whole, before they cut it. They had lots joining it in Monroe county and Phillips and——

Q. How does it compare to the tract on Big Island?

A. I think Big Island is one of the best in either county. [fol. 209] Q. Is it more valuable or not than the Wylie tract?

A. I think it is more valuable. It's easy to log. You have got the river on one side and the chute on the other, and you can haul it for less money than the others.

Q. What was paid by S. M. Bush?

A. Forty-five dollars an acre.

Q. You stated you handled that deal?

A. Yes, sir.

Q. Has that land been on the market since then?

A. I understand now—that is, I heard—a representative of the Fisher Body Company said that they have got thirty-five hundred acres that lays in Monroe county, that they offered to the Fisher Body Company, of Memphis, at seventy dollars an acre—just recently.

Mr. Buzbee: The defendant objects to the above question, because it is purely rumor and hearsay.

Witness: That's what it was.

Q. On page 22 of Mr. Keaton's deposition he was asked, on cross-examination: "Didn't Mr. S. B. Dennison, of Stuttgart, offer you seventy dollars an acre for the Big Island tract of timber?" and he stated you did not. Please explain that?

A. I saw Mr. Keaton—I think it was on the train going to Memphis, and——

Q. How long ago was that?

A. It was since I made the deposition, some time. And Mr. Keaton says, "Mr. Buzbee told me that you had said you would give sixty-five dollars an acre for Big Island." [fol. 210] And he said, "Well, would you take it? I can get you a buyer if you will take it." He said he wouldn't take it, but he never said whether he would take seventy or not. He didn't answer.

Q. Did you intend buying the timber lands yourself?

A. There's a lumber concern in Memphis got me looking now for a tract—the Wood Lumber Company. Mr. Gene Wood is president of it. We are looking for a tract now, down in Phillips county.

Q. Is that a large company—the Wood Lumber Company?

A. Yes, sir; they have plenty of money.

Q. How much money?

A. I don't know, but they are good.

Q. How many acres are there on that Big Island tract?

A. About seventy-two hundred acres.

Q. Could this Lumber Company have got up enough money to pay?

A. Yes, sir.

Q. Was this a bona fide offer you made?

A. Yes, sir; I could have handled it at sixty-five.

Q. Could you have handled it at seventy?

A. Woods had just authorized me to make it sixty-five. He had been on Big Island.

Q. And he had authorized you to offer sixty-five dollars an acre for it?

A. Yes, sir.

Q. And Mr. Keaton declined the offer?

A. He didn't say what he would take; said he wouldn't take that. I think he said it wasn't on the market.

[fol. 211] Q. Did Mr. Keaton ever state to you what price they were holding that for?

A. He told me a few years ago at St. Charles that they had an estimate that there was ten thousand feet per acre on Big Island—they were holding it at a hundred dollars an acre. That's several years ago.

Q. That was the Mr. Keaton who is now sitting in the chair next to you?

A. Yes, sir.

Q. Mr. Dennison, are there or are there not cut-over timber lands in Arkansas county that are worthless?

A. Yes, sir; I consider worthless. I don't know of any value on them in Arkansas county. There was—the bank at Memphis owns a twenty-eight hundred acre tract—and he telephoned me he had an offer of three dollars an acre and asked me my advice about selling it at that price, and

I advised him not to take it; if the bank was able to hold it it might be worth more money some time later, but I wouldn't give three dollars an acre for any cut-over land myself.

Q. On page 29 of Mr. Keaton's deposition he was asked, on direct examination, this question: "What is the highest you have cut on any tract of land, of any size, on Big Island?" He answered, "On Big Island we logged—we cut timber on the southwest quarter of Section 10, west of chute, and fractional sections 14 and 15, south of chute, township 5 south, range 1 west, containing 590.56 acres. From that we got 2,403,661 feet, which would be slightly [fol. 212] over four thousand feet per acre. That tract of timber was cut clean, during the years 1920 to 1923, logged by Mr. J. B. Horton and S. H. Moore, and that is the particular tract of land referred to by Mr. Dennison in his deposition as the five hundred acre tract laying west of Big Island chute." Mr. Dennison have you that tract of land in mind?

A. That's not on the Island. West of the chute wouldn't be on the Island.

Q. Where is that?

A. That lays on the chute west of the Island, and then west, in five one and ten, I don't think there's any cut on that—I am not sure.

Q. He specifically mentions the southwest quarter of section 10 west of chute, and fractional sections 14 and 15, south of chute, township 5 south, range 1 west, containing 590.56 acres?

A. Well, 14 and 15 south of chute; that's been cut.

Q. Has it been cut clean?

A. Its been cut clean, yes, sir.

Q. How about the other?

A. In 10, five-one—if there's been any cut in five-one I don't know about it. They cut four—went further up.

Q. Mr. Keaton states that they had cut slightly over four thousand feet per acre on this particular land.

A. They have cut on the chute—cut most of the time the water was up high, and they cut along on the high parts next to the chutes. I don't think they cut but two or three [fol. 213] hundred acres. I might be wrong. I had some

on the Island, but it didn't come back very far and I don't think we cut but just a few acres on Big Island.

Q. How much of that two or three hundred acres did they cut?

A. I say I think they cut over two or three hundred acres.

Q. How does that land that they have cut the timber on compare with the balance on Big Island?

A. It was good timber.

Q. What would you estimate the amount—the number of feet?

A. I wouldn't know what they cut and wouldn't know just how many acres, but I know they didn't come back very far because the water was up.

Q. You think they only cut two or three hundred acres out of the seven thousand?

A. I think, bu I don't know for sure. I am sure not much.

Q. Mr. Dennison, has Mr. Keaton ever discussed with you the amount of timber he has cut from the Monroe county lands?

A. He told me once on some acreage in Monroe county he *he* had cut about eleven thousand feet per acre.

Q. When was that?

A. That was in 1919 or '20—several years ago. Said he had kept an account of what he had cut.

Q. Was it a considerable tract they cut over?

A. A tract—yes, sir; several hundred acres.

Q. Mr. Dennison, you remember the values as you testified to on the former deposition, do you not?

A. Yes, sir.

[fol. 214] Have you any reason to change your statements as to the value of the White River Lumber Company's lands?

A. No, sir.

Q. Do you wish to stand by those?

A. Yes, sir; any statement I made I will stand by.

Q. You think that is accurate and true?

A. To the best of my knowledge; yes, sir.

Q. Are you familiar with those lands?

A. Yes, sir. I am familiar with all of the lands in that country. I have been over it lots of times.

Q. You are in that business—of buying and selling timber?

A. Yes, sir.

Q. Mr. Dennison, will you enter into a written option with Mr. Keaton here for the purchase of Big Island today?

A. No, I couldn't today. That's been a couple of months ago since I talked to Mr. Woods. But I am sure he would take it at sixty-five dollars an acre.

Cross-examination.

Questions by Mr. Buzbee:

Q. Mr. Dennison, don't you think that if Mr. Wood wouldn't take it now that Henry Ford, or John D. Rockefellow, or J. P. Morgan would?

A. I don't know anything about that.

Q. Have you kept an accurate account of the land and timber cuttings and transactions of the White River Lumber Company for the past ten years?

[fol. 215] A. No, sir. I haven't kept any account of it at all. The only thing I know is just passing by where they are operating, and having land adjoining.

Q. Have you ever been connected with them?

A. No, sir.

Q. Have you ever had charge of their lands in any way?

A. No, sir.

Q. Have you ever had charge of the Storthz lands?

A. I have done some work for Mr. Storthz. He paid me for it. I looked after some of his lands.

Q. In speaking of the Storthz land a while ago, were you referring to a special tract of it that had been sold to the Thane Lumber Company, or were you referring to all of the Storthz land?

A. I was referring to the piece I understand had recently been sold. Now that on the extreme lower end was out of Arkansas county. I don't know whether he owned any in Desha county. I looked over some of that with a view of buying. They sold it to the Mingle people.

Q. How much land, approximately, does Storthz own?

A. At one time, twenty-four thousand acres.

Q. How much was involved in the tract that you were discussing a while ago?

A. I think about thirteen thousand acres. That might not be true, but that's my understanding; around that.

Q. Hasn't the White River Lumber Company a lot of land that has been cut over?

A. Yes; lots of it.

[fol. 216] Q. That cut over land of theirs is not worth any more than other cut-over land is it?

A. No, sir.

Q. All of that timber land is practically worthless after the timber is gone?

A. Yes, sir.

Q. So there is no value connected with it except the value of the timber?

A. That's all; yes, sir.

Q. Your statements are made, aren't they, merely as the result of casual observation as you have traveled around through the country?

A. Well, I have been over that land. I have always looked at timber land. At one time I thought I might buy some of their land. At one time — think they would sell it.

Q. How do you get your information about the financial condition of Mr. Wood?

A. Through Mr. Bailey, at his bank.

Mr. Rose: Who is he?

Witness: Mr. Bailey is president of the bank—the Liberty Savings Bank & Trust Company. He said he would finance any deal Mr. Wood made.

Q. So that is purely hearsay?

A. Mr. Bailey told me he could finance any deal——

Q. Do you know anything of your own knowledge?

A. Just what Mr. Bailey and Mr. Woods told me.

Q. Nothing beyond that?

A. No, sir. I don't know whether he was telling me a story. I don't think he was.

[fol. 217] Q. How many people owned land on what you call Big Island?

A. There's not very much. E. A. Rolfe owns six or seven hundred acres. And the Southwestern Veneer Company owns close to a hundred acres; maybe ninety-five, or maybe a hundred and five; around that.

Q. Is the Rolfe land good land?

A. It was good before the timber was cut. I helped to log that and measure the logs that come off of that. They cut eight or nine thousand feet off of that.

Q. When was that?

A. They cut it in 1918 or 1919.

Q. Did that belong to E. A. Rolfe at that time?

A. Yes, sir. He probably had some associates with him, but I think the deeds are in E. A. Rolfe's name. Bought it from a fellow by the *ma-* of Hack or Haak, or something like that.

Q. Mr. Rolfe is an individual?

A. Yes, sir. He may be connected with a corporation; I don't know. But these lands—I think the deed was made to E. A. Rolfe, some other Rolfe and J. M. Linder.

Redirect examination.

Questions by Mr. Rose:

Q. Mr. Buzbee asked you if a great many of the lands of the White River Lumber Company were not cut-over lands and you answered that they were. Were your estimates in your former deposition and your estimates today based on the good lands alone, or did they take into consideration the good and bad?

[fol. 218] A. Well, I meant the lands not cut-over. I wouldn't want to buy any—they cut their lands pretty clean where I have seen.

Q. Now when were those lands cut over?

A. They began operating down there, I think, along in 1919 or 20; maybe latter part of '18, but some time then; from '18 to '20.

Q. Well, your estimates of value—isn't it a fact that most of the timber lands in the county are partly cut over?

A. Yes, sir. Now they—it's been cut over on the river and in the bottom, for the last five or six years.

Q. The figure you put on the White River Lumber Company's land on Big Island—did you mean to say that you would give sixty-five dollars an acre, or get a purchaser at that figure, for the entire tract?

A. For what hadn't been cut over.

Q. And how much has been cut over?

A. I don't know. I don't remember but two or three hundred acres cut; but I don't know.

Q. How about the land outside—off of Big Island? Your figures you have given in your former deposition—did you take those lands as a whole? You didn't take simply one good acre and include——

A. Only that the timber was one, didn't I? I don't remember. Most all of their land south of Big—my recollection is that nearly all the lands south of Big Island has been cut in Arkansas county.

[fol. 219] What figure did you put as the value of the other lands, outside of Big Island, of the White River Lumber Company?

A. I think, before they were cut, at thirty dollars an acre.

Q. And you would want to deduct the value of the logs taken since 1919 on that basis?

A. Yes, sir. I wouldn't say it was worth that now; cut over. I would say it was practically worthless now.

Q. Mr. Dennison, have you any interest in this case?

A. No, sir; not a bit.

Q. Have you ever received any remuneration for your testimony?

A. No, sir.

Q. Do you expect to receive any?

A. No, sir; don't want any.

Q. Is your testimony that of a disinterested person?

A. Yes, sir; absolutely. The only money I have—you taken me once—I taken you and we went to St. Charles and brought a fellow back, and there was gasoline and some little expense, and you paid me for that. I think the whole thing was about fifteen dollars.

Q. Have you ever received anything else?

A. No, sir; don't expect it; don't want it.

Recross-examination.

Questions by Mr. Buzbee:

Q. Mr. Dennison, you have shown a great deal of familiarity with everything that has happened along White River. Isn't it a fact that for years down there Mr. Perry [fol. 220] Martin and others operating with him, and in connection with him, cut lots of timber?

A. In connection with who?

Q. Mr. Perry Martin?

A. In connection with who?

Q. Other people working with him, or for him?

A. Perry Martin has been cutting timber there for a good many years; yes, sir.

Q. Did he cut a lot off of White River Lumber Company's land?

A. I don't know.

Q. Wouldn't you have been bound to have known if he had cut some there?

A. He didn't around in Arkansas county on Big Island. I think there's been a lots in Desha stolen and Phillips. They have lost lots that has been stolen, but I don't know that——

Q. You say they did not cut in Arkansas county?

A. Perry Martin? I didn't say he didn't. He probably has. I don't know. But if he stole any, I——

Q. Wouldn't you have been bound to know if he had cut logs on the White River property up there?

A. He might have cut some I wouldn't know about. He has logged—if he stole any there I don't know——

Q. I didn't say he stole them. As a matter of fact, he did, but I——

A. I understand he has logged for the White River Lumber Company and probably hauled for them.

[fol. 221] Q. I am speaking now of prior to 1920.

A. Mr. Buzbee, there's millions of feet of timber stolen all over the lower end there, up to the foot of Big Island. I expect the White River Lumber Company has suffered the loss of millions of feet of timber from timber thieves. I wouldn't say Perry Martin did it, but it——

Q. If any timber was cut off the land it was damaged that much?

A. Yes, sir.

Q. When that timber was cut off, whether by timber thieves or anyone else, the land became practically worthless?

A. When it was cut clean, yes, sir. They only cut timber that would float—ash, cypress and cottonwood—none of that grew up in St. Charles in any large quantities. On the lower end there was lots of cottonwood—cypress and ash.

I think in recent years they have got so they can float gum and maybe oak.

Q. You don't pretend to say accurately, do you, what lands of the White River Lumber Company have been cut?

A. I don't say the sections. I know they have cut a great deal in Arkansas and Monroe, and some little in Phillips county.

Q. You apparently know a great deal more than Mr. Keaton about a lot of matters there, but you don't pretend that your estimates would be more accurate than the figures he has, do you?

A. I just say what I really think about it.

[fol. 222] Redirect examination.

Questions by Mr. Rose:

Q. Mr. Dennison, the amount of timber stolen in Arkansas county would necessarily be a small per cent of the total timber, would it not?

A. Yes; I would think so, while there's been lots stolen on the lower end of White River.

Q. But it would be a small per cent?

A. I don't know. There's been lots stolen. I think everything that was worth much that would float was stolen from way down.

Q. When was that stolen?

A. I expect that's been twelve or fifteen years ago.

Q. Your figures on the estimates would take into consideration what was on that land at what date?

A. I went in the timber business about '17 and I never—I have been over the bottom and looked after some timber lands for some non-residents before then, but that was the first cut—the first I cut in 1917, and they hadn't taken any to speak of from township six south, one, up since that time. People begin to looking after it more closely. I think old man Storthz has suffered more than anybody else from stolen timber.

Q. How much has been stolen on Big Island?

A. I don't think any ever has. Might have been a few trees every now and then; never much that would float; probably some ash and cypress.

Q. What proportion of the county has timber been stolen from?

[fol. 223] A. Most of it down on LaGrue; it——

Q. What proportion of it—what per cent?

A. I expect about forty per cent's been stolen in Arkansas county.

Q. And the other sixty per cent?

A. Not very much.

Mr. Rose: That's all.

Mr. Buzbee: That's all.

(Signature waived.)

Witness excused.

[fol. 224] State of Arkansas,
County of Pulaski, ss:

I, Helen W. Wing, a Notary Public within and for the County of Pulaski and State of Arkansas, duly commissioned and acting herein, do certify that, by consent of the respective counsel herein appearing, there came before me, at the office of John M. Rose, Home Insurance Building, Little Rock, County of Pulaski, and State of Arkansas, the within named S. B. Dennison, who was by me first duly sworn to testify the whole truth of his knowledge touching the matters in controversy aforesaid; that he was examined and his statements reduced to writing by me, and that his signature was, by agreement of counsel, waived, on the day, between the hours, and at the place set forth; and his said deposition is now herewith returned.

Given under my hand and seal in said city, county and State, this 25th day of September, 1926.

Helen W. Wing, Notary Public. My commission expires March 21, 1929. (Seal.)

Endorsed; Deposition of S. B. Dennison. Filed in my office January 28th, 1927. Duce Pike, Clerk.

[fol. 225] [Title omitted]

Deposition of witness produced, sworn, and examined on the 29th day of November, 1926, between legal hours, at the offices of Buzbee, Pugh & Harrison, Home Insurance Building, Little Rock, Arkansas, before Helen W. Wing, a notary public within and for the county of Pulaski and State of Arkansas, duly commissioned and acting herein, to be read in evidence upon behalf of the defendant in the above entitled cause, now pending in the above-styled court, all formalities in the taking and transmitting of said depositions being waived, exceptions saved as to the competency, relevancy, and materiality of the evidence.

Appearances:

For the Plaintiff: John M. Rose, Esqr.

For the Defendant: Buzbee, Pugh & Harrison, by Thos. S. Buzbee, Esqr.

[fol. 226] W. W. KEATON, being first duly sworn on his oath to testify the truth, the whole truth, and nothing but the truth in behalf of the defendant, testified as follows:

Direct examination.

Questions by Mr. Buzbee:

Q. You are the same W. W. Keaton who has already testified in this case?

A. Yes, sir.

Q. You are manager, I believe, of the White River Lumber Company?

A. Yes, sir.

Q. You also testified, I believe, that you had formerly been county surveyor of Arkansas county?

A. Yes, sir.

Q. I hand you what purports to be a section map of Arkansas county, made by F. M. Quertermous. Have you examined or looked over that map?

A. I have.

Q. Is it approximately correct?

A. Yes, sir.

Q. Do the shadings of the map show with approximate correctness the different characters of land as indicated by the map?

A. Yes.

Q. I also hand you a stipulation entered into by the parties hereto showing recitals from certain deeds as set out in said stipulation. This stipulation will be identified by [fol. 227] being marked No. 1 and attested by the notary public. The conveyances in said stipulation have been numbered or lettered in red ink and the map which I have exhibited to you has been numbered in red pencil. Do these numbers on the map approximately represent the location of the lands described by the conveyances referred to in said stipulation?

A. Yes, sir.

Q. You testified in your former deposition that you had purchased certain lands from L. Storthz for about thirteen dollars per acre. Is said land correctly indicated by the blue marks on said map?

A. Yes, sir.

Q. Does the legend on the map referred to correctly indicate on the map the lands there described?

A. Yes, sir.

Q. The map purports to show by lettering the lands of the White River Lumber Company and the lands of L. Storthz. Does the map show with approximate correctness the lands of the White River Lumber Company and of Storthz in Arkansas county?

A. Yes, sir; approximately.

Q. Mr. Keaton, are all of the lands of the White River Lumber Company well timbered and valuable for timber purposes, or are any of the lands without timber?

A. Much of the land is without timber. There are several thousand acres—I won't say several thousand acres—[fol. 228] there's a ver- large acreage of their land that is—that consists of lakes, bayous and other open water streams, which are not deducted in figuring the acreage. The government survey only deducts acreage from navigable streams. There's one lake near the mouth of LaGrue that contains more than a half section in one body. There is another—that is Goose Lake. There is another lake on the upper end—near the upper end of Scrubb Grass Bayou,

called Alligator Lake, and also Yonker Pin Lake, and Prairie Lake. Each of those lakes contain several hundred acres, not show—not deducted from the acreage in the government survey—government plats.

Q. Is there any of the land which is not in water but which has no merchantable timber?

A. There is a large amount of the land that doesn't have any timber—any merchantable timber on it. I could not say the exact, I wouldn't try to say the exact amount I think wouldn't have timber on it.

Q. Has it ever had any timber on it, or since the White River Company has owned it?

A. Never has.

Q. Has the White River Company lost much timber by depredations of trespassers?

A. They have suffered very heavily on the land that it near the river—near the streams. Most of the ash and cypress has been taken from the lands, and other kinds of timber that would float, with the exception of gum.

[fol. 229] Q. You mean that has been taken by trespassers, without the consent of the White River Lumber Company?

A. Yes, sir.

Q. Will you attach the map which has been referred to to your deposition as Exhibit "A"?

A. Yes, sir.

Cross-examination.

Questions by Mr. Rose:

Q. Mr. Keaton, how long have you been employed by the White River Lumber Company?

A. I think that the first work I did for them was in 1917, but not in the capacity that I am now employed until 1918.

Q. What is your present capacity?

A. Manager of the operations in the State of Arkansas.

Q. Mr. Keaton, are you familiar with the tract of some thousand acres which was sold last year by the Wisconsin-Arkansas Lumber Company to Nickey Bros., Inc., in Grant county for eighty dollars an acre?

A. No, sir.

Q. You don't know whether that land was all covered with timber or whether parts of it were barren?

A. I am not well acquainted with that land. I have been on part of it.

Q. Well, don't you know as a matter of fact, that considerable of that land has no merchantable timber on it?

A. Well, I have been on only a very smal part and I am [fol. 230] not familiar with——

Q. Well, the part you have been on?

A. The part I was on was mighty good timber. Mr. C. C. Winters, who was logging for us, tried to get us interested in buying it, and I went with him and looked at a little of it and when we found out the price they wanted we didn't consider it any further.

Q. How much did they ask?

A. I think that he said the price was about eighty dollars per acre.

Q. How much of that land did you actually go on?

A. I spent about a half day looking at one little piece of the land.

Q. A hundred acres?

A. I was—I expect I saw a half section; probably more than that; not over a section.

Q. You don't know anything about it except——

A. No, not very much.

Q. The map which you have attached as Exhibit "A" to your deposition—this is introduced to show, I assume, the proximity of these various pieces of land, timber land, which have been testified to in this case. Now, Mr. Keaton, I will ask you what is the nature of timber land? Can you take a tract of ten thousand acres and say that that tract is all practically the same kind of land and with practically the same value of timber on it, and take the adjoining ten thousand acres and say it is worthless, or is it mixed, some good and some bad?

[fol. 231] A. It's mixed.

Q. Then the fact that some of these lands which are of smaller value is next to those which we contend are of larger value could not necessarily have any bearing on the value of these other places, could it?

A. Yes, the White River Lumber Company's lands are practically surrounded by other transfers shown on this map, and——

Q. Well, I will ask you about your own acres. How many acres has the White River Lumber Company in Arkansas county?

A. Between twenty-four thousand and twenty-five thousand acres. I don't know exactly.

Q. I believe you have testified on a former occasion that you cut as much as twenty thousand feet to the acre on some small part of that?

Mr. Buzbee: He did not.

Mr. Rose: Well, that's all right. If he didn't, let him——

A. I don't recollect having testified to that amount.

Q. Well, you told Mr. Dennison on one occasion that you had cut that much from one small tract, didn't you?

A. No, sir.

Q. You did testify yourself that you had cut not exceeding ten thousand feet to the acre on Big Island, didn't you? Or on another tract?

A. I testified that it would be possible to pick out a few acres where it had produced that amount, or that would [fol. 232] produce that. I don't recollect that I testified that we had actually cut that, but it would be possible to pick out a few acres that would have that much.

Q. And on the other hand there are other acres that probably have no merchantable timber, aren't there?

A. Yes, sir.

Q. You can't tell the value of timber land by simply looking at a map and showing that one piece of timber land is within one or ten miles of that other valuable timber land, can you, Mr. Keaton?

A. What is the question?

Q. Can you look at a map and point out a valuable piece of timber land and tell from the location of it what the value of some nearby tract is worth?

A. No, not exactly.

Q. Could you get any idea whatever about it, without measuring the timber?

A. Not unless you knew the—were familiar with the land and type of timber on it.

Q. Unless you know what's on it? In other words, the map means nothing without knowledge of what is actually on the land? Isn't that true?

A. No, I don't think that's true. I think that the map is—that the descriptions marked on this map are sufficiently well distributed to show an average value—something like that.

Q. You think you could get an average value by showing [fol. 233] how far John Jones' land is from Bill Smith's land, by reason of the fact that Bill Smith's land is fifty dollars an acre? Do you think that's a reasonable basis to value timber lands on?

A. No, I don't, I——

Q. Are you familiar with the land in Monroe county near the White River Lumber Company's land, which was sold by the Ayer & Lord Tie Company to the Fisher Body Company within the last year, for approximately forty-five dollars an acre?

A. I have seen part of that land—a lot of it; not all of it.

Q. Isn't it true that probably half of that land does not contain any merchantable timber or sufficient value to cut and that one—the other half is that from which it derives its value?

A. I don't think there's that much waste land. There's some waste land but——

Q. Isn't it true that a great deal of timber has been stolen burned by forrest fires from that land?

A. Yes, it's true just as it's true over all of White River bottom. All of White River bottom has been burned over.

Q. Isn't it true that a great deal of timber has ben stolen from that land?

A. Very little timber has been stolen because that land that the Ayer-Lord Tie Company sold to Fisher Body Company is high land and only overflows occasionally, and the [fol. 234] timber that's been stolen has been floated out, and it's in different locality to—it's in a locality that has been affected by timber stealing as much——

Q. Do you know whether or not there has been a large amount stolen? If you don't know, state.

A. There hasn't been but very little timber taken from that land.

Q. Isn't a great deal of it—the Ayer & Lords lands—right on the river?

A. Yes, it extends from the river back towards Holly Grove; probably eight or ten miles from—river frontage.

Q. Wouldn't it be just as easy to steal that as from the White River land?

A. It would if it was in a territory where timber was being stolen.

Q. Do you think that the timber thieves simply imposed on the White River Lumber Company and befriended the Ayer-Lord Company?

A. No. But practically all the timber stealing has been below St. Charles. That's a territory that's not—no farms, no open country, *on* one lives there except the people that live in shanty boats, and it wasn't as much danger of being caught stealing as they would be up in the——

Q. Mr. Keaton, in the answer to the interrogatories filed in this case you have stated the number of feet which your company has sold for the years 1919 through 1925, and the [fol. 235] amount that it has been sold for. That is all of the timber that has been cut, isn't it, since the company has owned these lands? I hand you a copy of those answers.

Q. What time is this supposed to cover?

A. 1919 through 1925.

Q. This wasn't supposed to cover all of '25, was it?

A. I don't know. *A.* The end of our fiscal year is June 30th and I—I think—you mean cut by the White River Lumber Company?

Q. Yes.

A. I think this covers timber cut up to June 30, 1925, but I——

Q. It covers all timber cut from White River Lumber Company's lands up to and including June 30, 1925?

A. Yes, sir.

Mr. Buzbee: You mean cut by the White River Lumber Company?

Mr. Keaton: Yes, sir.

Q. Where was this timber cut from? What part of the lands?

A. That was cut from different parts: cut from——

Q. What was the greater part of it cut from?

A. Well, it was—some on the extreme upper end of the tract and some on the extreme lower end; very well scattered over the——

Q. Very little from Big Island, wasn't it?

[fol. 236] A. No; there has been a large amount cut from Big Island.

Q. There was a total of 22,818,355 feet cut during those years. Now, what per cent of that was cut from Big Island?

A. I wouldn't like to try to say without having my records here. I believe that when the first deposition was taken I testified to the amount that was cut from Big Island, and if I did I was testifying from the records that time. I haven't them with me, I don't want to guess at it.

Q. Approximately what per cent?

A. I wouldn't like to state without referring to my records.

Q. Well, what—there are about 7,200 acres you own on Big Island?

A. Approximately that amount.

Q. How many acres have you cut timber from on that island?

A. I couldn't say without having the records.

Q. Only a few hundred acres?

A. Oh, several hundred acres; probably—we have cut from approximately a thousand acres on Big Island.

Q. You have only cut a small part of the timber from those thousand acres, haven't you?

A. No; what we have cut we have cut clean.

Q. What years have you cut from Big Island?

A. Several different years. I——

Q. It began with 1924, didn't it?

A. No; we cut timber before that time, I wouldn't say that it was '21 or '22, but we cut——

Q. How much did you cut in 1921 or '22 from——

[fol. 237] A. From Big Island?

Q. Yes.

A I couldn't say, Mr Rose, without having the——

Q This statement shows the total number of feet cut in '21 You don't know what per cent was from Big Island?

A We didn't cut very much timber in '21 We cut——

Q. Mr. Keaton, are you in charge of the sales department in any way, of the White River Lumber Company?

A. Yes, sir.

Q. Will you recommend to the company a sale of all of the 7,200 acres on Big Island and the other 500 acres which have been closely identified with it in former depositions—will you recommend a sale by the company of the 7,700 acres at sixty-five dollars an acre?

A. Would I recommend it?

Q. Yes.

A. Yes.

Q. Will you make arrangements for the sale of that if a purchaser with good bond is produced within thirty days?

A. I wouldn't have authority. I would recommend it.

Q. Will you see that the sale goes through?

A. I wouldn't have any authority to do that. I couldn't do that, but——

Q. You say you are connected with the sales department. Will your company sell that land for sixty-five dollars an acre, if a good purchaser, who will furnish a good and sufficient bond, with a good surety on it, will sign a con- [fol. 238] tract to buy that land at sixty-five dollars an acre?

A. I would recommend the sale, but I couldn't make any sale; wouldn't have the authority to make any sale; make any deeds.

Q. Will the company sell the property for that price?

A. They have never been offered that for it, but I think that they would.

Q. You think they would? Will you give us thirty days in which to procure a purchaser of the 7,700 acres at sixty-five dollars an acre?

Mr. Buzbee: He said he had no authority to do that. He said he would recommend it.

A. I haven't any authority. I will recommend it.

Q. Will you close such a sale with the parties whom Mr. S. B. Dennison, of Stuttgart, has procured in Memphis for the purchase of this land?

A. I wouldn't recommend any sale to Mr. Dennison or to the parties that he referred to in his deposition.

Q. Isn't the Liberty Central Trust Company, of Memphis, responsible, in your opinion, Mr. Keaton?

A. I believe Mr. Dennison testified that he was referring to Mr. Woods.

Q. And he further testified that the Liberty Central Trust Company stated that they would financially back any proposition Mr. Woods made with Mr. Dennison, didn't he?

A. Mr. Dennison said that.

Q. Will you close on that basis if these parties are procured? Mr. Woods and Mr. Bailey and Liberty Central [fol. 239] Trust Company, or whatever the name of that Bank is in Memphis?

A. I wouldn't recommend anything on Mr. Dennison's promises or offers?

Q. Well, based on the Liberty Central Trust Company's promises?

A. Yes; if the Liberty Central will directly make an offer of that kind, I would recommend it.

Q. To be closed at once?

A. Yes; I would recommend that it be closed at once.

Q. Have you ever discussed that with your company?

A. I have not; never have had any offer.

Redirect examination:

Q. How long have you known Mr. Dennison.

A. About ten years.

Q. Do you consider him reliable in any particular?

A. Not in any particular.

Recross-examination:

Q. Do you consider yourself more reliable than Mr. Dennison, Mr. Keaton?

A. I do.

Q. How do the people in that community feel about it?

A. I don't know how they feel about it.

Redirect examination:

Q. Do you know how they feel about Mr. Dennison?

A. Yes, sir.

Q. How do they feel about Mr. Dennison?

A. Mr. Dennison is not regarded as being very truthful [fol. 240] and he hasn't any financial ability—has several judgments standing against him now in Arkansas and Monroe—hasn't any financial responsibility.

Recross-examination:

Q. Isn't it true that a great many good people have judgments against them, due to misfortune?

A. I don't know how many. I have one myself that's been against him—I own a half interest in it—unable to collect it.

Q. Do you still deny that Mr. Dennison, on the train from Clarendon to Memphis, asked if you would accept sixty-five dollars an acre for this particular land? You denied it on a former deposition and Mr. Dennison in a subsequent deposition, at which you were present, stated the circumstances of that offer. Do you still deny that he made you that offer?

A. Yes, sir.

Q. Do you deny there was any conversation in connection with it?

A. I recollect being on the train with Mr. Dennison, but don't recollect discussing any offers—don't remember any discussion as to this land. I was on the train with him a number of times——

Q. You were present at the time Mr. Dennison testified in his last deposition that he made this offer and that you stated that you would not take sixty-five dollars an acre for the land?

[fol. 241] A. I was present, yes.

Q. You have not rebutted that up until this minute?

A. I have never been asked.

Q. Then, it's just a question of you accuse Mr. Dennison of being untruthful and he accused you of being untruthful, so its half a dozen of one and six of the other, isn't it?

Mr. Rose: That's all.

Mr. Buzbee: That's all.

(Signature waived.)

Witness excused.

[fols. 242 & 243] Certificate

State of Arkansas,

County of Pulaski, ss:

I, Helen W. Wing, a Notary Public within and for the County of Pulaski and State of Arkansas, duly commis-

sioned and acting herein, do certify that, by consent of the respective counsel herein appearing, there came before me, at the offices of Buzbee, Pugh & Harrison, Home Insurance Building, Little Rock, Arkansas, the within named W. W. Keaton, who was by me first duly sworn to testify the whole truth of his knowledge touching the matters in controversy aforesaid; that he was examined and his statements reduced to writing by me, and that his signature was, by agreement of counsel, waived, on the day, between the hours, and at the place set forth; and his said deposition is now herewith returned.

Given under my hand and seal in said city, county and State, this 30th day of November, 1926.

Helen W. Wing, Notary Public. My commission expires March 21, 1929. (Seal.)

[fol. 244] Deposition endorsed: Deposition of W. W. Keaton. 11/29/26. Filed in my office Dec. 6th, 1926. Duce Pike, Clerk.

[fol. 245] In Chancery Court of Arkansas County

[Title omitted]

Stipulation re Assessment Sheets—Filed Jan. 28, 1927

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the following sheets contain true and correct recitals of the facts and figures contained in various deeds conveying real estate in Arkansas County, Arkansas, which deeds now appear of record in the office of the circuit clerk and recorder as stated herein. It is also agreed that said sheets correctly state the actual assessment of each of said tracts for taxation for the respective years mentioned. It is agreed that this stipulation may be introduced and read in evidence on behalf of defendant as evidence of the contents of said deeds, but the plaintiff hereby expressly objects to the admissibility or competency of said facts and figures to show the

actual considerations paid for each and all of said tracts of land, because not the best evidence thereof.

R. E. L. Johnson, John M. Rose, Special Counsel for Plaintiff. Buzbee, Pugh & Harrison, T. S. B., Sol'rs for Defendant.

No. 1, referred to in deposition of W. W. Keaton taken November 29, 1926.

Helen W. Wing, Notary Public. (Seal.)

[fol. 246] Clerk's certificate to following paper omitted in printing.

[fol. 247] Omitted in printing.

Exhibit A to Stipulation

Arkansas County, Southern District

1914

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 248] 379 18	W. G. Walton et al to W. H. Noreworthy	11/7/14	$38,500.00	3,923.20	Und. ½ Int. W. ½, N. ½, N. W. 29-4-1. 40 Ac. S. W. 20 160 Ac. E. ½ 19 320 Ac. E. ½, W. ½ 19 160 Ac. S. W., S. E. 7-5-1 40 Ac. S. W., N. W. 35-5-2 40 Ac. Lots 4, 5, 6, 7 Blk. 17, St. Charles; all in 4-1 rice land; 5-1 gen. farm; 5-2 timber

Arkansas County, Southern District

1915

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 249] 2 439 18	John Natho to A. A. Richard	2/17/15	1,900 00	400 00	N. E., S. W., 18-7-3 Rice land
3 505 18	J. H. Martin to B. F. Thompson	5/1/15	12,600 00	3,120 00	N. E. ¼ 20-7-3 W. ½, N. W. 21-7-3 Rice land
4 551 18	L. E. Thomas to B. F. Thompson	8/12/15	6,150 00	1,600 00	S. ½, N. E. 31-5-3 80 Ac. N. W., S. E. 31-5-3 40 Ac. N. E., S. W. 31-5-3 40 Ac. Rice land
5 26 19	G. M. Dupslaff to Jno Webster	12/9/15	2,400 00	800 00	W. ½, S. W. 3-4-2 80 Ac. Rice land
6 57 19	J. L. Ingram to E. J. Bayes	12/31/15	7,200 00	2,150 00	N. ½ Sec. 16; S. E. Sec. 16; 4-3 480 Ac. Rice land

Arkansas County, Southern District

1916

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[Vol. 250] 7 62 19	P. I. Hadden to H. W. Cordell	1/17/16	4,800 00	1,400 00	E. ½, S. E. ¼ 31-4-3 N. ½, N. E. 34-5-4 160 Ac. Rice land
8 64 19	A. Frank et al to Jacob Luebke	1/4/16	4,900 00	1,280 00	N. W. 26-3-2 160 Ac. Rice land
9 135 19	Wm. Hamby to Albert M. Bohnert	3/20/16	17,000 00	480 00	All Spanish Grant 2331; all Spanish Grant 2470; 7 and 8 S. r. 3 W., 510 41 Ac. Rice land
10 193 19	Sarah Walton to H. I. Thompson	5/1/16	10,000.00	2,500 00	E. ½, E. ½; N. W., N. E.; 16-5-4 Rice land
11 344 19	O. J. Raskaten to Frank Moll	11/1/16	6,400.00	1,600 00	S. W. ¼, 24-5-4 160 Ac. Rice land
12 437 19	J. C. Wemrich to F. E. Collier	11/15/16	4,800 00	1,560 00	S. E., S. W. 8-7-3 40 Ac. S. E., S. E. 8 40 Ac. S. W., S. E. 8 40 Ac. S. W., S. W. 9-7-3 40 Ac. 160 Ac. Rice land

EXHIBIT A TO STIPULATION—Continued

Arkansas County, Southern District

1917

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 251] 13 45 20	W. A. Dearth to J. C. Schmidt	7/1/17	11,200.00	3,500.00	S. E. ¼, E. ½, N. E. 20-4-4 E. ½, W. ½, N. E. part rice land-bal. gen. farm.
14 179 Y-5	Jno. McWilliams to E. B. Gibson	12/24/17	8,000.00	2,000.00	N. W. 8-4-2
15 532 19	J. T. Wright to B. H. Turner	2/19/17	11,000.00	3,500.00	S. ½, N. W., N. ½, S. W. ¼ 22-5-3 Rice land
16 593 19	J. C. Metcalf to W. C. Butcher	4/5/17	3,000.00	800.00	S. ½, N. W. 8-7-2 80 Ac. Rice land
17 626 19	J. M. Johnson to E. E. Broadwell	1/1/17	8,500.00	2,100.00	S. E. 18-5-3 160 Ac. Rice land

Arkansas County, Southern District

1918

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 252] 18 20 639	J. A. Price to J. C. Cunningham	10/22/18	2,000.00	640.00	S. W. 30-4-1
19 20 422	J. C. LaCotts to B. S. Baddle	3/5/18	10,000.00	2,000.00	S. E. 20-4-2 Rice land
20 20 599	E. S. Ellis to J. A. Price	8/19/18	2,000.00	640.00	S. W. 30-4-1

21	20	330	S. O. Pappele to A. Lepine	2/6/18	29,800.00	5,500.00	Frl. S. W. ¼, 6-5-3 153.57 Ac. Frl. N. W. ¼, 6-5-3 203.55 Ac.
22	20	332	J. A. Smith to Numa Mouton	1/16/18	40,000.00	6,000.00	Sub. to r/w and lease. Rice land. N. ½, S-E. ¼, S. W. 5-4-3 Rice land
23	20	564	W. T. Cost to E. M. Brown	8/2/18	3,800.00	900.00	N. W., N. W. 27 N. E., N. E. 28, 4-3
24	20	551	J. F. Hamilton to B. F. Thompson	6/29/18	4,320.00	1,000.00	N. ½, N. E. 30-5-3
25	20	349	R. Bonner to J. M. Satchfield	2/9/18	8,000.00	1,280.00	N. W. 21-7-2 Rice land
26	20	633	E. Hargrove to A. Hargrove	9/20/18	500.00 and assumption of Mtgs. Amt. of $6,000)	2,000.00	Frl. S. ½, N. W. 5, Lots 2 and 5 in N. E. 6, 5-4
27	20	569	J. J. Davis to J. F. & S. A. Kennedy	6/4/18	2,575.00	660.00	Frl. N. ½, N. W. 5-5-4
[fol. 253] 28	20	563	M. J. Pommer to Rebecca Sager	6/29/18	7,700.00	2,000.00	N. W. 29-6-3 160 Ac. less R. R., R/W.
29	21	2	Chas. Ardt to E. J. Walton	11/5/18	720.00	190.00	S. E., N. E., N. W., Frl., S. E. N. W. 4-8-2 being S end Lot 3 and all Lot 4 of N. W. ¼
30	21	565	Alice M. Backes to Chas. W. West	10/17/18	2,000.00	560.00	S. ½, N. E., S. E., N. W. 29-4-1
31	22	509	W. O. Stender et al. to A. Cummings	1/4/18	4,800.00	1,500.00	N. E. 24-5-5 Ex. 40 Ac. S. S. N. E. ¼ 120 Ac.

EXHIBIT A TO STIPULATION—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
32 23 41	Jno. McWilliams to Jno. Webster	1/1/18	3,600.00	1,000.00	E. ½, S. W., 3-4-2
[fol. 254] 32A R-5 146	Queenie L. Biggs to Ralph Marshall	8/30/18	1,300.00	240.00	S. E., N. E. 5-4-4
32B R-5 9	Walton Ark. Rice Co. to J. F. Hamilton	8/29/18	37,500.00	7,500.00	W. ½, 16-5-3 S. ½, S. W., 9-5-3
32C T-5 87	John Vos to A. A. Tindell	12/26/18	95,000.00	18,800.00	S. E., S. W., 5-3-2 S. E., N. E., S. W., N. E., S. E., S-3-2 S. W. & N. ½, 9-3-2 N. W. (Ex. 2Ac. in N. E. cor) 16-3-2 S. W. 16-3-2 All 17-3-2 E. ½ 20-3-2 2 Ac. in N. W. Cor. of S. E. 9-3-2 All that part N. W. 10-3-2 S. & W. of Popular Creek

Arkansas County, Southern District
1919

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 255] 33 92 21	Will Festz to J. H. Mathews	1/21/19	1,200.00	250.00	S. ½, S. ½, S. E. 35-6-3
34 98 21	H. C. Andrews to Wm. Luebke	1/16/19	27,000.00	6,280.00	S. W. 19 N. E. 30 } 3-2 S. E., S. E. 24-3-3

1½ 35	110 (a)	21	J. J. Fricker to I. R. Hollanger	2/17/19	1,600.00	640.00	N. ½, S. W. 13-4-4		
2 36	65	22	Lee Woods to A. Woods	12/18/19	1,000.00	310.00	Lt. 1 N. W. N. E., N. W. 76.61 Ac.	5-5-2	
37	620	21	A. Bucholz to B. S. Norsworthy	3/4/19	16,000.00	2,730.00	S. E.-25		
					4,210.00		N. E.-36		
							N. ½, S. E.-36	3-2	
						1,480.00	N. ½, S. W.-36		
							N. W.-31		
							N. ½, S. W.-31	3-1	
							W. ½, S. E.-31		
3 38	357	22	W. F. Kay to H. B. Allen Sickel et al.	11/11/19	25,200.00	9,400.00	S. ½, 33		
							S. ½, N. ½, 33		
							N. W., N. W., 33	3-3	
							N. E., N. E., 33		
							E. ½, E. ½, 32		
							720 Ac.		
39	16	22	H. C. Andrews to Geo. Elder et al.	5/1/19	1,600.00	320.00	E. ½, S. W., 25-3-3		
4 40	534	21	Ed. Satterlee to H. L. Brown	121/7/19	500.00	250.00	S. end S. E. 25-4-2 50 Ac.		
41	544	21	J. E. Stephens to T. G. Vawter et al	12/20/19	5,000.00	780.00	Lots 6, 7, 8, 9, 10-25 Ac. in S. E. 33-4-3 known as Holt place. Strip N. End, E. ½, E. ½, S. E. 33-4-3 6.15 Ac. Less 2½ Ac.		
[fol. 256] 42	553	21	Hy Ahrens et al. to Harley Rollison	11/13/19	12,000.00	1,960.00	S. ½, N. W.— W. ½, S. W.—32-4-3 Rice land.		

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.		Grantor and grantee	Date	Consideration	Assessed value	Description
43	552	21	W. B. Stroud to R. F. Rogers	12/29/19	20,000.00	3,920 00	W. ½, N. E.—5-4-3 N. W. ¼ E. ½, N. E.—6-4-3
44	605	21	Warner France to E. M. Brown	12/15/19	600 00	105 00	S. ½, S. W. ¼, S. W. ¼. 22-4-3 20 Ac.
45	532	21	Grace McKay to Fuller Bros.	12/29/19	7,600 00	1,800 00	S. E. 15-4-4 160 Ac. Rice land.
5 46	570	21	E. B. Frownfelter to A. J. Ambuhl	8/15/19	4,000 00	2,500 00	S. W. 20-4-4
47	583	21	A. H. Valentine to C. W. Fox	10 11/11/19	25,600 00	5,000 00	S. W. 26 N. W. 35—4-4 320 Ac. less R/W.
48	608	21	T. C. McGavic	12/3/19	$1.00 and other considerations (lien retained D of T in amt. of $6,000)	2,000 00	S. E. ¼, 7-4-4 160 Ac.
49	539	21	G. W. Clark to S. E. Condor	12/20/19	1,600 00	520 00	Lot 1 and N. ½ Lot 2 and N. 5/8 Lot 3 in N. W. Sec. 2-5-2 101 21 Ac.
50	126	21	E. W. Calloway to Peter Schaefer	3/3/19	12,000 00	3,000 00	S. E. 24-5-3 160 Ac. Rice land.
51	173	21	H. Pittman v. G. W. Watson	3/13/19	20,100 00	3,500 00	N. E. N. W., S. E. } 27-5-3 Less strip on 5x32 Rods Rice lands.

[fol. 257]	52	540	21	J. W. Allen to R. L. Moncrief	12/20/19	1,500.00	230.00	½ Int. Frl. E. ½ Lot 1, N. W. ¼ Lot 2, N. W. ¼ Frl. N. W., N. E. 3-5-3 58.18 Ac.	
53	61	22	W. R. Willis to J. A. Price		12/30/19	2,000.00	500.00	N. ½, N. ½, 35-5-3 Ex. strip S. 8. 2 Ac. leaving 38 Ac.	
54	88	22	N. C. Claiborne to D. E. Saul		8/1/19	60,000.00	8,020.00	S. E.-8) S. ½, S. W. 8) W. ½-9) N. W.-16) N. ½, S. W.-16) 800 Ac.	5-4
6									
55	440	23	S. M. McAdams to C. E. Worley		12/18/19	9,000.00	3,240.00	N. E. 14-5-4	
56	220	22	D. E. Saul to J. E. McElligott		10/29/19	26,400.00	5,050.00	S. W. ¼ W. ½, S. E.) 12-5-5 240 Ac.	
57	537	21	J. W. Benson to Heck Wright		11/11/19	625.00	130.00	Left of Bayou Meto N. ½, N. E., S. E. 6-5-5 18.35 Ac.	
58	538	21	F. O. Gill to Heck Wright		12/8/19	1,000.00	540.00	Frl. E. ½, N. E., 6-5-5 Pt. S. W., N. E., 6-5-5 E. of Rd. 74 Ac.	
7									
59	547	21	J. E. Cook to D. P. Milliken		1/30/19	1,000.00	300.00	1 Ac. insq. in N. W. Cor. of S. W. 14-5-5	
60	13	22	L. E. Combs to A. Zimmerman		11/26/19	1,540.00	300.00	Frl. W. ½, N. E. 7-5-5 77 Ac.	

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
8						
[fol. 258]	61 533 21	J. D. Edmonson to A. L. Kitselman et al.	11/26/19	400.00	240.00	S. W., N. E., 13-6-3 W. ½, N. W., N. E. 13-6-3
62	133 22	Ludwig Lehmann to R. L. Lehmann	12/19/19	4,900.00	1,895.00	S. E., N. W., 28.30 Ac. E. side W. ½, N. W. 28-6-3
63	144 21	W. C. Butcher to G. O. Simmons	2/13/19	12,000.00	2,800.00	N. E., 18) 7-2 E. ½, S. W.-7 Rice land.
64	172 21	E. J. Bodman to C. L. Morgan	2/10/19	42.80 12,502.48	3,760.00	N. W., N. E.) S. ½, N. E.)24-7-3 N. W. ¼ Frl. N. ½, 19-7-2 627.14 Ac. Rice land.
65	149 24	W. T. Simpson to T. J. Davis et al.	3/11/19	9,000.00	2,600.00	W. ½, S. E., 28-5-2 with all rice plant machinery
9						
66	607 23	J. A. Gammon to A. B. Adams	12/31/19	400.00	160.00	N. W., N. E. 7-6-2
67	554 22	G. M. Purdy v. J. W. Shackleford	3/25/19	3,500.00	710.00	S. E., N. W. 21-5-2 N. E., N. W., 25-5-3 80 Ac.
10						
68	471 22	L. A. Black to Jim Miller	1/1/19	4,600.00	1,800.00	E. ½, S. E. 19-4-2
69	166 24	W. H. Norsworthy v. W. M. Scruggs	4/24/19	1,200.00	360.00	E. ½, N. E. 8-5-1

70	580	21		C. W. Rasco to C. W. Adams	1/28/19	1,320.00	120.00	Bl. 40 & 50 Imp. Co. Add. DeWitt
71	14	22		C. H. Kirkpatrick to S. B. Dennison	9/10/19	82.50	20.00	Lots 1-2-3-, B.1 10-11-12, B.1 St. Charles
[fol. 259] 72	550	21		M. R. Crandall to L. Alexander	123/1/19	2,000.00	120.00	Lot 17, Block 14 Gillett
11 73	569	21		Frank Whiting to H. F. Sykes	11/24/19	300.00	10.00	Part Sp. Grant 240.3 Township
[fol. 260] 73A	R-5	61		DeWitt Rice Mill Co. to Stuttgart Rice Mill Co.	6/2/19	190,000.00	43,000.00	7 & 8 S. 60 Ac. Blks. 50 & 51 DeWitt
73B	S-5	25		H. H. Hagan et al. to Don Milliken	11/17/19	1,750.00	160.00	S. ½, N. ½, S. W. ¼ 26-5-5 40 ac.
73C	T-5	110		M. E. Boucher et al. to Sam'l Williams	2/8/19	1,500.00	160.00	S. W., S. W. 36-6-3

Arkansas County, Southern District
1920

Record, page and vol.				Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 261] 74	21	551		A. W. Wright to H. O. Goodwin	1/2/20	700.00	200.00	Lots 6, 7, 8, 9, 10 Block 34, Olena
12 75	21	566		M. R. Crandall to W. D. Tillinghast	1/5/20	700.00	260.00	Lots 5 and 6 Block 14 Gillett

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.		Grantor and grantee	Date	Consideration	Assessed value	Description
76	21	611	J. I. DeVore to D. T. Sanders	2/10/20	3,500 00	750 00	Und. ½ Lots 21 and 22, Block 14 Gillett
77	21	61	T. G. Vawter et al to E. G. Bowers	2/5/20	1,500 00	282 00	Lot 3, Block 16 Gillett
78	22	9	9 Courtney France to John Michaelis	1/28/20	1,000 00	100 00	B. E. ¼, Block 90 Gillett
79	21	571	B. Rasco to Mayo Hudson	1/17/20	200 00		Lot 9, Block 9 DeWitt
80	21	624	J. W. Allen to R. L. Moncrief	2/4/20	450 00	60 00 Not assessed in 1920 separately.	Block 52, Imp. Co. Addn. DeWitt
81	22	12	Mayo Hudson & T. B. Hudson to W. H. Norsworthy	1/31/20	3,850 00	600 00	Lots 9, 10, 11, 12, Block 9, DeWitt
82	22	183	R. D. Rasco to G. W. LaCotts	4/21/20	12,500 00	2,700 00	W. ½, Lot 13, W. ½ Middle 1/3 Lot 2 Block 17, DeWitt
83	21	594	E. C. Thompson to Russ Thomas	1/28/20	15,600 00	3,450 00	Frl. N. W. 19, N. ½, N. E. 19, 6-3, Lots 1 to 8, Inc. Block 19, Gillett
[fol. 262] 13							
84	22	573	R. W. Menard to J. Z. Menard	1/12/20	700 00	300 00	Lot 2, Sp. Gr. 2343

14								
85	22	429	B. S. Norsworthy to W. H. Norsworthy	6/7/20	12,000.00	4,710.00	S. E. 25, S. E. 36, N. ½ S. E. 36, N. ½, S. W. 36, 3-2, N. W. 31, N. ½ S. W. 31, W. ½, S. E. 31, 3-1, N. W., N. W. 5, 4-1, N. E., N. W. 5-4-1
86	22	573	W. R. Nowlin to W. F. Simmons	1/2/20	4,000.00	550.00	N. ½, S. W. 28-7-2, Ex. 1 Ac. in N. W. corner, 79 Ac.
87	22	575	D. J. Nowlin to W. F. Simmons	1/2/20	2,000.00	300.00	S. W., S. W. 28-7-2
88	21	613	T. A. Miller to W. J. Royall	2/1/20	2,150.00	650.00	Lots 9, 10, 11, 12 Block 13, DeWitt.
15							
89	22	278	G. Roush to I. B. Massey	5/8/20	800.00	270.00	W. ½, Pt. Lot 1, N. E. 5-8-2, 22.25 Ac., Lot 1, N. W. 5-8-2, 44.50 Ac.
16							
90	22	286	W. H. Bonner to Anderson Tully Co.	8/3/20	1,500.00	1,480.00	Frl. N. W. 30-8-1, Frl. N. E., 30-8-1, with accretions now north of river.
91	22	106	H. A. Strode to M. H. Judd	3/11/20	5,600.00	640.00	S. E. ¼, 3-7-4
92	22	7	G. W. Ross to T. L. Strode	2/2/20	8,000.00	1,100.00	W. ½, S. W. 1-7-4 Rice land.
17							
93	22	291	Ada Petterson to L. A. Auston	8/14/20	200.00	100.00	E. ½, N. W., S. E. 21-7-3 20 Ac.
[fol. 263]							
94	22	289	Frank Wolf to J. E. Elrod	2/7/20	550.00	100.00	E. ½, N. W., S. E. 21-7-3 20 Ac.

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.		Grantor and grantee	Date	Consideration	Assessed value	Description
95	22	44	August Kersten to F. J. Mell	2/26/20	50,000 00	6,400.00	S. ½, N. E. 19-7-3 W. ½, S. W. 20-7-3 N. W., 29-7-3 W. ½, S. W. 29-7-3
18							
96	21	630	A. H. Richter to Frank Wolfe	2/5/20	200 00	100 00	E. ½, N. W., S. E., 21-7-3
97	22	60	Alf Richards to E. W. Nichols	3/1/20	20,000 00	3,800 00	S. E., N. E., S. W., 18-7-3 200 Ac.
98	22	63	Sarah T. Walton to Frank Moll	3/3/20	30,000 00	4,000 00	N. ½, N. E. ¼, 19, N. W. 20-7-3, 240 Ac.
99	22	85	F. B. Moon to Wm. Moll	2/28/20	128,000 00	9,040 00	E. ½, 17 W. ½, 16, 7-3, (reserving sawmill in 16)
100	21	629	J. E. Elrod to Frank Wolfe	2/7/20	1,650 00	460 00	Pt. E. ½, S. E. 15-7-3 47.41 Ac. Excl. 1 Ac. N. E. Cor.
101	21	556	W. B. Elrod to R. R. Tremble	1/6/20	800 00	205 00	S. W., S. W. 10-7-3 Ex. strip 33 ft. across S. end 39 Ac.
19							
102	21	574	Irl Odenbaugh to W. P. Elrod	1/17/20	1,000 00	350 00	E. ½, N. E., N. W. 9-7-3 20 Ac.
20							
103	22	3	M. J. Taylor to W. T. Merritt	1/3/20	400 00	560 00	S. W., N. W. 4-7-3 40 Ac.

[fol. 264]

104	22	301	Wm. Moll to W. F. Simmons	2/7/20	$1.00 & other valuable considerations.	3,320.00	E. ½, E. ½, 20-7-2 N. ½, S. ½, 21-7-2
105	22	45	C. L. Morgan to Leo Burger	3/1/20	20,000.00	4,440.00	N. ½, Frl. 19-7-2 347.14 Ac. S. ½, N. E. 24-7-3, N. W., N. E. 24-7-3, N. W. 24-7-3, E. ½, S. E. 13-7-3, N. ½ N. W., S. E. 13-7-3, S. W., N. E. 13-7-3, E. ½, S. E., N. W., 13-7-3, S. W., S. E., N. E., 13-7-3, 450 Ac.
21 106	22	190	R. L. Wofford to J. W. Sandage	4/14/20	300.00	120.00	N. E., N. E., 16-7-2
22 107	22	176	Rosa Malcomb to W. L. Cross et al	1/15/20	400.00	160.00	40 Ac. S. side Frl. E. ½, N. E. 4-7-2.
108	22	318	W. H. Bonner to Byron Bitely	2/9/20	1,500.00	290.00	Lot 2, S. W., 7-7-1 74.30 Ac.
23 109	22	206	W. H. Cummings to L. A. Black	4/17/20	1,913.32	1,500.00	S. E. ¼, 12-6-5
10	22	100	E. L. Chaney to G. L. Clark et al	2/6/20	42,000.00	5,020.00	N. ½, Sec. 1-7-4 S. ½, S. W., 36-6-4
111	21	635	A. R. Seller to H. A. Strode	1/12/20	3,822.00	730.00	N. W., N. E., N. ½, N. W., S. W N. W., N. W., S. W., 34-6-4 191.10 Ac.

EXHIBIT A TO STIPULATION—Continued

Record, page and vol.			Grantor and grantee	Date	Consideration	Assessed value	Description
24							
112	21	562	A. L. Youngblood to W. S. Probst	1/9/20	500.00	220.00	Frl. N. ½, N. E. 33-6-4
113	21	597	Harvey White to Joe Ax	1/30/20	8,000.00	2,000.00	N. W. 20-6-4 less R/W for canal
fol. 265]							
114	22	156	L. M. Cronkhite to I. C. Gibson	3/22/20	$1.00 and other considerations	560.00	W. ½, S. W., S. W., N. W. 4-6-4 120 Ac.
115	22	157	Della Montgomery to E. F. Bullock	3/15/20	1,000.00	120.00	Frl. N. E., N. W., 4-6-4
116	22	252	D. McGaldbey to W. S. Probst	4/27/20	1,800.00	480.00	N. ½, S. W. 3, N. W., S. E. 3-6-4
25							
117	22	67	L. Lehmann to Eric Lehmann	2/25/20	7,700.00	2,680.00	N. W. 21-6-3 Ex. 20 Ac. S. S. of N. W. ¼
118	22	78	Sophia P. Travis to A. Kersten	2/27/20	3,600.00	500.00	S. W., S. E. 19-6-3
119	22	161	Russ Thomas to E. L. Chaney	2/24/20	16,000.00	3,150.00	Frl. N. W. 19, N. ½ N. E. 19-6-3
120	21	596	Jo Nichol to F. E. Collier et al.	1/20/20	11,100.00	2,300.00	N. ½, N. ½, 16-6-3 160 Ac.
121	22	305	B. Goldbeck to Arthur Rauke et al.	8/21/20	5,000.00	700.00	N. W. 10-6-3

122	22	370	N. Chapman to S. H. Oakwood				
123	22	151	H. A. Strode to N. Chapman				
124	22	46	J. A. Price to L. A. Black				
(fol. 266) 125	22	222	L. A. Moon et al. to A. O. Gill				
126	22	309	L. A. Black to Mrs. L. A. Black				
127	22	374	F. C. King to T. H. Jackson				
27	22	325	Thos. J. Moher to Hy Wrape Co.				
129	22	223	T. H. Jackson to C. L. North				
130	22	27	Jas. M. Simpson v. D. E. Saul				
131	22	350	Hy Barnett to Jane Scott				
132	22	378	J. M. Walker to C. Hansing				
				12/6/20	$1.00 and other considerations	800.00	W. ½, S. E., S. E., S. E.
				3/16/20	6,000.00	800.00	W. ½, S. E. ¼, S. E., S. E. 9-6-3
				1/23/20	2,000.00	320.00	N. ½, N. ½, S. W. 35-5-5 Ex. strip off S. end, leaving 38 Ac.
				5/14/20	1,200.00	250.00	N. E., N. W. 22-5-5
				3/2/20	15,000.00	5,200.00	S. E., S. ½, N. E. 24-5-5 S. E. 13-5-5
				12/2/20	2,250.00	640.00	E. ½, N. E. 20, W. ½, N. W. 21-5-5, 160 Ac.
				9/27/20	1,000.00	320.00	W. ½, S. W. 20-5-5
				5/14/20	4,375.00	460.00	E. ½, N. E. 18-5-5 87.48 Ac.
				10/20/19	22,900.00	5,050.00	S. W. 12-5-5 W. ½, S. E. 12-5-5
				9/27/20	1,250.00	300.00	N. W., S. E. 10-5-5 40 Ac.
				10/5/20	2,600.00	520.00	Frl. N. W., N. W. 3-5-5 Frl. E. ½, N. E., N. E. 4-5-5 29-65 A.

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
28						
133	22 168	E. F. Park et al. to W. A. Probst et al.	3/23/20	1,179.10	420.00	Frl. N. ½, S. W. 19-6-2 N. W., S. W. 26-5-4
134	22 331	J. M. Simpson to E. B. Frownfelter	8/19/20	81,000.00	12,750.00	S. ½, S. E. 17, All 20 S. ½, S. W. 21, N. ½, N. W. 28-5-4
135	21 588	B. F. Thompson to W. C. Woodson	1/26/20	7,201.00	1,400.00	W. ½, S. E. 16-5-4 S. W., N. E. 16-5-4 120 Ac.
[fol. 267]	136 22 38	J. L. McCallie to Jim Hargrove	2/19/20	2,000.00	420.00	E. ½, N. E. 17-5-4 80 Ac.
29						
137	22 300	Chas. Scheuer to L. E. Swan	9/2/20	200.00	80.00	E. ½, S. W., S. W. 14-5-5
138	21 590	J. V. Jacobs to J. F. & S. A. Kennedy	1/20/20	1,800.00	420.00	N. E., S. E. 5-5-4 Ex. 5 Ac. on S. S.
139	22 391	Robt. Johns to Chas. H. T. Garlick	11/30/20	145,000.00	20,020.00	All 2 S. W., 3 E. ½, N. W. 11-5-4 1450 Ac.
140	22 240	David Nihisher to A. D. Murrell	5/21/20	3,400.00	915.00	E. ½, N. W. 30-5-3
141	22 86	H. J. Purdy to Wm. Schaefer et al.	3/10/20	8,000.00	1,000.00	E. ½, S. W. 25-5-3
142	21 555	C. W. Fox to B. H. Turner	1/1/20	6,400.00	1,000.00	N. ½, N. W. 22-5-3 80 Ac.

143	22	229	F. F. Combs to C. P. Vittitow	3/10/20	1,700.00	480.00	S. ½, N. W., N. W., S. W. 12-5-3 120 Ac.
144	21	626	V. C. Williams to B. H. Turner et al.	1/22/20	2,450.00	410.00	N. W., S. E., Ex. 7 1/3 Ac. E. side 5-5-3 32 2/3 Ac.
145	21	625	C. M. Turner to B. H. Turner et al.	1/22/20	3,550.00	480.00	S. ½, Lot 5, N. E. 20 Ac. N. E., S. E., 40 Ac. E. 7 1/3 Ac. N. W., S. E. 5-5-3.
146	21	610	P. A. Douglass to J. A. Smith	1/22/20	4,000.00	240.00	S. ½, N. W., N. W. 4-5-3 20 Ac.
[fol. 268] 147	22	19	G. M. Sibley to J. A. Price	2/5/20	1,050.00	200.00	2 Ac. on N. side of S. W. Lot 5, N. W. 3-5-3
30							
148	22	39	T. M. Jones to Carl Owens	3/1/20	2,850.00	1,000.00	5 Ac. in Sq. S. W. cor. Lot 4 N. W. 3-5-3
149	22	235	W. A. Law, Jr. to Thos. Power, Sr.	5/10/20	3,200.00	400.00	80 Ac. off W. side N. W. 1-5-3
31							
150	22	358	Jno. Parker to Wm. J. Clossen	10/30/20	420.00	150.00	Frl. S. E. S. W., 36-5-2
32							
151	22	225	L. K. McAdams to J. H. Tucker	1/27/20	250.00	240.00	W. ½, S. W. 25-5-2
152	22	226	J. H. Tucker to Wm. Leak	5/1/20	300.00	90.00	S. 30 Ac., W. ½, S. W. 35-5-2
33							
153	21	623	J. H. Tucker to Wm. Leak	2/7/20	315.00	150.00	N. 50 Ac., W. ½, S. W. 35-5-2

Exhibit A to Stipulation—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
154	22 68	H. C. Derrick to Wm. Leak	2/7/20	6,400.00	1,100.00	S. ½, S. E. 33-5-2 80 Ac.
155	22 280	J. W. Cordell to L. K. McAdams	7/24/20	1,500.00	450.00	N. ½, S. E., 34-5-2 Ex. 5 Ac. in N. E. cor.
34 156	22 121	J. T. Wright to C. R. Fox	3/2/20	200.00	80.00	W. ½, S. E., N. E. 17-5-2
35 157	22 66	R. H. McNeill to W. F. Schallhorn	2/2/20	2,800.00	1,040.00	E. ½, N. E., S. E., S. W., S. W. 16-5-2 280 Ac.
36 158	22 319	E. J. Walton to Milton Holbert	1/16/20	2,300.00	920.00	S. W., N. W., S. E., E. ½, S. W., S. E. 14-5-2 220 Ac.
[fol. 269] 159	22 188	G. L. Cummins to Kerns Quinn Lbr. Co.	4/22/20	8,320.00	1,280.00	E. ½, Sec. 9-5-2
160	22 392	J. J. Pichskoup to R. W. Lemons	12/18/20	1,150.00	250.00	S. W., S. E. 7-5-2 40 Ac.
161	22 40	G. W. Barnett to W. E. Byerly	3/2/20	10,216.50	2,800.00	S. ½, S. ½, 36-4-4 160 Ac.
162	21 391	A. J. Houston to J. W. Davis	1/27/20	5,000.00	1,000.00	N. ½, S. E. 35-4-4
163	22 165	C. E. Harthan to E. E. John	2/9/20	3,000.00	480.00	N. ½, S. E. 28, S. W., S. E. 28-4-4

164	21	586	R. C. Burks to G. F. Johnson et al.	1/21/20	22,000.00	3,600.00	S. ½, S. ½, N. W., S. E., S. W., N. E. 24, N. ½, N. ½, 25-4-4 400 Ac.
165	21	581	R. O. Burks to C. H. Merrill	1/1/20	9,000.00	2,000.00	N. W. 20-4-4
166	22	354	N. Schwartz to J. C. Schmidt	3/13/20	2,400.00	720.00	W. ½, S. W. 16, W. ½, N. W. 21-4-4 160 Ac.
167	22	89	C. E. Rose to J. L. W. Fuller	1/8/20	8,000.00	1,800.00	S. W. 15-4-4
168	21	573	Chas. Scheuer to H. Bothe	1/23/20	$1 and other valuable considerations	2,530.00	N. W. 15-4-4 S. W., N. W., N. W. 16-4-4
37 169	22	367	S. C. Snyder to Robt. Kestner	2/18/20	854.75	2,000.00	Frl. N. W. 3-4-4 166.45 Ac.
170	22	366	Jno. LaCotts to D. P. Montgomery et al.	9/24/20	1,000.00	160.00	S. W., N. W., 35-4-3 Ex. pt. S. of Rock road con. 36 Ac.
[fol. 270] 171	22	114	J. C. LaCotts to Phillip McGraw et al.	3/23/20	500.00	160.00	S. E., N. E., 34-4-3
172	21	558	W. J. Royal to Chas. Maguire	1/1/20	5,500.00	1,090.00	S. W., N. W., S. W., 34-4-3 Also 13 Ac. N. W., S. W.
173	22	174	T. W. Rollison to J. R. Perry	2/9/20	1,500.00	110.00	W. ½, E. ½, S. W., S. W., 33-4-3 10 Ac.
174	22	349	D. McGahhey to A. G. Wheeler et al.	102/9/20	1,100.00	320.00	N. ½, N. W. 29-4-3

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
38						
175	22 73	W. C. Poynter to Gilbert Rockwell	2/26/20	1,000 00	400 00	S. W., N. W., N. W., S. W., 28-4-3
39						
176	21 585	Chas. Sanders to Sam Henderson et al.	1/23/20	600 00	200 00	S. W., N. W., 24-4-3
177	22 380	B. Martin to W. F. Pike et al.	12/24/20	1,800 00	480 00	S. ½, S. E., N. E., N. E., 23-4-3 120 Ac.
178	22 313	R. W. Lemons to Wendell Pickerill	9/16/20	2,500 00	500 00	S. ½, S. E., 20-4-3 80 Ac.
179	22 259	J. E. Martin to Mildren Potter et al.	6/8/20	1,600 00	240 00	E. ½, N. W., 14-4-3
180	22 294	J. W. Allen to Miss L. E. Swan	8/21/20	1,500 00	480 00	S. W., 13-4-3
181	22 2	W. H. Martt to J. V. Jacobs, Sr.	2/8/20	1,200 00	360 00	S. E., S. W., 15-4-3 40 Ac.
[fol. 271] 40						
182	22 145	R. F. Reid to J. V. Jacobs, Sr.	4/5/20	350 00	160 00	N. E., S. W., 15-4-3
41						
183	22 281	G. W. LaCotts to O. W. Dillion	7/7/20	200 00	160 00	N. W., N. W., 30-4-2 80 Ac.

42								
184	22	193	H. L. Brown to G. F. Williams et al.	4/28/20	750.00	250.00	Pt. S end S. E., 25-4-2 50 Ac.
185	22	321	J. B. Criswell to J. H. Freed, Jr.	3/1/20	1,700.00	180.00	E. Pt. S. ½ S. E., 24-4-2 46 Ac.
186	21	576	R. C. Bridger to Wm. Dupslaff et al.	1/17/20	8,000.00	1,070.00	N. ½, S. W., 5-4-2 80 Ac.
43							
187	22	152	W. H. Norsworthy to J. A. West	2/18/20	600.00	230.00	W. ½, N. ½, N. E., 29-4-1
44							
188	22	155	R. M. Davis to George West	1/12/20	500.00	210.00	N. W., N. W., 21-4-1
189	22	255	Joe Timmimier to S. B. Dennison	6/26/20	3,175.00	610.00	Fri. Pt. N. E., 9-4-1 127½ Ac.
45							
190	22	18	J. W. Allen to R. M. Harris	1/27/20	480.00	160.00	N. E., N. W., 29-3-3 40 Ac.
191	22	17	R. O. Burks to R. M. Harris et al.	1/19/20	1,600.00	640.00	N. E., 29-3-3
192	22	113	A. E. Moran to L. R. Wright	1/1/20	$1 and other considerations	8,200.00	S. ½, 30 N. W., 30-3-2
46							
193	22	269	Mrs. W. A. Merritt to L. F. Burnett	7/3/20	500.00	200.00	S. E., N. W., 24-3-3

EXHIBIT A TO STIPULATION—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 272] 194 X5 317	A. A. Tindall to Prange Bros.	5/8/20	50,000.00	18,085.00	S. W., 29, N. W., 20, E. ½, 20 all Sec. 17; W. ½, S. E., S. W., N. E., & S. ½, S. E., N. E., in 16; all in 3-2 1,820 acres
195 22 119	W. C. Poynter to Abbie Rollison et al.	2/26/20	12,000.00	2,100.00	N. W., 26-4-4 Less R/W.
196 21 584	C. W. Fox to L. W. Rader	1/23/20	14,800.00	2,500.00	½ Int. S. W. of 26 & ½ Int. N. W. 35-4-4
197 22 8	W. P. Porter to S. B. Dennison et al.	1/31/20	71,402.65	11,440.00	(For description see Exhibit "A" to Dennison's deposition.)
[fol. 273] 197-A T-5 393	H. B. A. Sickel et al. to J. G. Rossman	6/10/20	30,303.33	4,890.00	S. E., 8-6-3, E. ½, S. W., 8-6-3, ex. 10 Ac. in N. W. Corner, E. ½, N. E., 17-6-3, W. ½, N. E., 18-6-3, E. ½, N. E., N. W., 18-6-3, S. ½, 33-3-3, S. ½, N. ½, 33-3-3, N. W., N. W., 33-3-3, N. E., N. E., 33-3-3, E. ½, E. ½, 32-3-3
197-B S-5 469	R. C. Hearn to Louis McAdams	4/13/20	2,250.00	395.00	S. E., S. E., 12-5-3 N. E., N. E., 13-5-3
197-C S-4 384	Stillwell Merc. Co. to H. E. Crill	2/14/20	16,000.00	2,760.00	S. E., N. W. and S. W., N. E., 10-7-3, N. ½, N. W., 11-7-3
197-D S-5 351	S. T. Walton to M. R. Crandall	3/12/20	129,500.00	20,950.00	S. ½, S. W., 27-6-3, S. ½, S. ½, 33-6-3, N. ½, S. E., and N. ½, 4-7-3, N. E., E. ½, N. W., and E. ½, W. ½, N. W., 5-7-3, S. ½, N. W. and S. W., 17-7-3, N. E., 20-7-3, W. ½, N. W., 21-7-3

197-E	S-5	527	G. W. Ross to C. F. Ross	2/2/20	8,000.00	1,180.00	E. ½, S. W., 1-7-4, N. ½, S. W., N. W., 11-7-4
197-F	S-5	197	D. T. Sanders et al. to W. D. Sykes et al.	2/ /20	32,000.00	4,750.00	N. ½, 27-6-3
197-G	S-5	190	Catherine Buffo to H. B. A. Sickle et al.	1/16/20	32,000.00	5,270.00	S. E. & E. ½, S. W., (ex. 10 Ac. in N. W. Cor.), 8-6-3, E. ½, N. E., 17-6-3, W. ½, N. E. & E. ½ of N. E., N. W., 18-6-3
[fol. 274] 197-H	S-5	79	W. S. Thompson to B. F. Thompson	1/14/20	7,000.00	1,575.00	W. ½, S. E., 16-5-4, S. E., N. E., 16-5-4
197-I	T-5	259	F. R. Moss et al. to Norton & Wheeler	8/10/20	57,000.00	4,800.00	S. E. & E. ½, W. ½, 17-3-3, N. E. & E. ½, S. E., 19-3-3, N. ½, S. W., N. ½, S. E., 20-3-3, N. W., 21-3-3
197-J	T-5	114	J. M. Morris to H. A. Strode et al.	4/12/20	18,940.00	2,000.00	All Spanish Grant No. 2400 and accretions—678 Ac.
197-K	T-5	107	O. M. Young & Co. to Eugene Wilson	5/25/20	12,000.00	2,120.00	S. ½, 3 & W. ½, W. ½, 10-5-2
197-L	T-5	88	J. A. Smith to Smith Rice Mill Co.	5/3/20	4,000.00	240.00	S. ½, N. W., N. W., 4-5-3
197-M	T-5	24	H. F. Linder, S. B. Dennison et al. to M. G. Bailey et al.	4/17/20	17,850.63	2,780.00	¼ Und. Int. S. W., N. W., W. ½, S. W., 29-5-1, S. ½, N. E., S. E., Lots 1, 2, 7, 8, S. W., 30-5-1, N. E., N. E., W. ½, S. E., Lots 1, 2, 3, 6, 7, 8, N. W., 31-5-1, N. ½, N. E., S. E., 32-5-1, W. ½, N. W., N. W., S. W., 33-5-1, Frl. W. ½, 6-6-1, E. ½, S. E., 7-6-1, W. ½, 17-6-1, S. E., N. E., 18-6-1, Frl. N. ½, N. E., 1-6-2, Lots 1, 2, 3, 8, S. W., 31-5-1

EXHIBIT A TO STIPULATION—Continued

[fol. 275] Arkansas County, Southern District

1921

	Record, page and vol.		Grantor and grantee	Date	Consideration	Assessed value	Description
47							
198	405	22	R. Bonner to H. H. Chatfield, Trustee	1/7/21	400 00	160 00	S. E., N. W. 1-7-3
48							
199	593	22	Geo. Weinrich to A. C. Weinrich	7/30/21	5,000 00	1,920 00	N. W., S. W. N. E., S. W., Ex ½ Ac. for road 8-7-3 S. ½, N. W., S. E. N. E., S. E. 8-7-3 N. W., S. W. 9-7-3
200	40	23	H. F. Sykes to Mrs. Geo. McGee	12/6/21	3,000 00	480 00	S. E. 16-8-2
201	406	22	E. M. Stinson to S. V. Branham	1/8/21	325 00	80 00	E. of B., S. E., N. E. 33-6-4
202	512	22	Warren Smith to M. C. Smith	2/25/21	400 00	100 00	W. ½, E. ½, N. E., S. E. 4-6-3
49							
203	5	23	R. H. Whitehead to L. F. Loggins	1/31/21	1,000 00	400 00	N. ½, N. E. 21-6-2 80 Ac.
50							
204	46	23	C. W. Hogan to H. W. Bachelder	11/10/21	1,000 00	300 00	S. ½, N. ½, S. W. 26-5-5 40 Ac.
205	562	22	A. H. Perry to S. A. Rousseau et al.	5/28/21	2,000 00	260 00	S. 65 Ac. of W. ½ S. W. 21-5-2

206	630	22	J. E. McElligot v. J. M. Simpson	8/10/21	18,000.00	3,050.00	S. W., W. ½, S. E.	12-5-5
51 207	527	22	A. J. Bailey to J. P. Bailey	5/2/21	14,000.00	4,800.00	S. ½ 23 N. E. 23 W. ½, N. E. 26 560 Ac.	5-4
(fol. 276) 208	417	22	C. P. Vittitow to J. M. Garrison	1/25/21	3,300.00	480.00	N. E., S. E. 12 N. W., S. E. 12 S. W., S. E. 12 120 Ac.	5-3
52 209	302	23	J. B. Morgan to C. C. Butler	8/21/21	1,000.00	400.00	W. ½, N. E., 13-5-2	
210	20	23	Susan Robinson to Minsor People	3/12/21	600.00	160.00	S. E., S. W. 2-5-2 40 Ac.	
211	25	23	A. P. Mitchell to Cecil Brown	11/14/21	1,000.00	250.00	N. W., S. E., 5-5-1 40 Ac.	
53 212	552	22	H. C. Andrews to L. K. McAdams et al.	5/21/21	625.00	220.00	S. W., N. E. 33-4-3	
213	23	23	A. P. Mitchell to H. Dickens	11/21/21	722.00	200.00	S. ½, W. ½, S. W. 4-5-1 40 Ac.	
54 214	55	23	Cecil Marrs to O. E. Crosby	12/28/21	450.00	160.00	S. E., S. E. 14-14-3 40 Ac.	
215	521	22	Edith L. Henderson et al. to C. W. Rasco	4/27/21	2,500.00	500.00	S. E., S. E., 7-4-3 Rice land	

EXHIBIT A TO STIPULATION—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
215 58 23	G. W. Goelzer to W. J. Somers	12/31/21	25,000.00	4,100.00	½ Int., E. ½-33 W. ½-34 } 4-2
217 93 23	Lee Woods to W. H. Norsworthy	12/31/21	12,000.00	2,000.00	S. ½, N. W. 32-4-2 Rice land
[fol. 277] 217-A U-5 532	W. M. Milliken to T. M. Hill	4/10/21	5,000.00	640.00	All Sec. 11 E. of Bayou W. ½, N. W. 13 N. ½, N. W. 13 N. E. (E. of Bayou) 14-6-5
217-B U-5 646	Maggie Day to A. H. Perry	3/26/21	4,800.00	520.00	W. ½, S. W. 21-5-2 N. E., S. E. 20-5-2 N. ½, N. ½, S. E., S. E. 20-5-2
217-C U-6 457	W. J. Royall to Mary E. Bumalarger	3/20/21	3,000.00	300.00	Lots 4-5-6 Blk. 31 De Witt
217-D U-5 434	W. F. Keaton to W. W. & J. B. Keaton	3/19/21	6,000.00	1,220.00	S. ½, N. E., N. ½, S. E. N. E., S. W. 21-3-3 W. ½, N. W., S. E., N. W., S. W. 22-3-3
217-E U-5 158	T. E. Simmons to R. F. Reed	12/4/21	1,200.00	200.00	N. W., S. E. 23-4-3

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
55 218 56	23 279	G. F. Cox to M. E. Cox	10-21-22	100.00	400.00	E. pt. of E. pt. S. P. Gr. 2396, 160 Ac.
219	W-5 157	Virgie Hallen et al. to W. W. Roberts	8-3-22	1,000.00	640.00	E. ½, E. ½, 1-6-4
220	X-5 280	C. E. Hammons to H. M. Jacoway	12-30-22	8,224.00	2,060.00	Frl. W. ½, S. W. 29, 77.12 Ac. N. E., S. E. 30, Frl. S. W. 30 E. of Bayou, 115.14 Ac. & 78.29 Ac. in Frl. W. ½ of N. W. 31 N. & E. of Bayou and 73.87 Ac. in E. ½, N. W. 31, N. of B.; Frl. N. E. 31-78.91 Ac. all in 6-4
221	23 140	C. M. Bailey to H. A. Jones et al.	2-14-22	12,000.00	1,580.00	N. ½ & S. W., 3-7-4
222	23 286	C. E. McGraw to H. E. Crill	1-17-22	1,180.00	160.00	N. E., S. W. 10-7-3
223	23 285	C. D. Bosworth to G. E. Hammons	10-31-22	1,200.00	300.00	W. ½, S. W. 29-6-4
57 224	23 255	A. J. Hammet to W. W. Wilson et al.	9-18-22	700.00	240.00	W. ½, N. E. 11-6-4

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol	Grantor and grantee	Date	Consideration	Assessed value	Description
225	23 126	C. I. Hagerty to Jett Dent	3/10/22	4,778.50	370.00	E. 95.97 Ac. of N. ½ 5-6-4
226	23 137	Louis Miller to Jett Dent	2/27/22	2,000.00	120.00	N. W., N. W., Frl. ¼ 4-6-4 30.17 Ac.
227	23 297	A. F. Beachler to J. F. Cundiff	11/25/22	2,600.00	240.00	W. ½ S. E., 2 S. E., S. E. 2 E. ½ S. W. 11 6-4 (State)
[fol. 279] 228	23 130	J. R. Highland to G. W. Cooksey	1/17/22	1,000.00	350.00	W. ½ S. W., N. W. 31 N. ½ N. W., S. W., 31-6-3
58 229	23 273	P. M. Haler to T. J. Brown	10/28/22	2,000.00	860.00	Frl. N. W. 5-6-2 214.44 Ac.
230	23 306	T. H. Jackson to W. M. Foreman	9/27/22	4,000.00	600.00	E. ½ N. E. 18-5-5
231	23 319	Herk Wright to C. L. North	12/21/22	3,500.00	720.00	E. ½ N. E., 6-5-5, Pt. S. W., N. E. 6 E. of Road Twp. 5-5 Left of Bayou N. ½ N. E., S. E. 6-5-5 18.35 Ac.
59 232	23 147	D. W. Garrison to I. C. Schaefer	3/31/22	2,000.00	1,000.00	W. ½ N. W., 34-5-4
60 233	23 272	J. C. Hornbeck to L. A. Black	8/8/22	800.00	600.00	N. E., N. E., 26-5-4
234	23 305	J. R. Perry to J. M. Simpson	4/13/22	3,000.00	2,250.00	S. ½ S. W., 21, N. ½ N. W. 28-5-4

235	23	73	J. M. Simpson to E. B. Frownfelter	1/18/22	4,825.00	None	N. W. 17-5-4 160 Ac.
236	23	283	C. P. Chaney to Smith Rice Mill Co.	10/16/22	$1.00 and other considerations	25.00	N. ½ Lot 3 N. W. 4-5-3 20 Ac.
61 237	23	307	Paul Haller to L. F. Burnett	12/8/22	2,000.00	1,160.00	S. W. 32-5-2 except 2 Ac. S. E. corner &
[fol. 280] 62 238	23	321	T. J. Brown to P. M. Haler	10/28/22	1,000.00	420.00	10 Ac. S. W. corner S. ½, S. W. 9-5-2
63 239	23	290	Ethel Merc. Co. to Berry London	11/17/22	835.00	420.00	Frl. W. ½, S. W. 1-5-2
64 240	23	340	Thomas Criswell to L. J. Criswell	12/22/22	400.00	220.00	N. E., N. W. 17-5-1
65 241	23	70	Homer Dickens to R. C. Cox	1/21/22	600.00	280.00	S. ½, W. ½, S. W. 4-5-1 40 Ac.
242	23	374	T. E. Curtis to C. D. Woodburn, Trustee	2/1/22	4,800.00	1,200.00	N. ½, N. E. 9-4-4, 80 Ac.
243	23	306	E. B. Hill to W. L. Hanckett et al.	11/22/22	$1.00 & assume mortgage of 4,000.00	850.00	½ Int., S. W. 3-4-4
244	23	261	Wm. Dupslaff to Fred Dupslaff et al.	5/31/22	10,000.00	1,450.00	Frl. W. ½, N. W. 5-4-2 ½ Int. N. ½, S. W. 5-4-2
245	23	330	T. M. Word to Will Wilder	11/25/22	300.00	80.00	20 Ac. in N. E., N. W. 6-4-2

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
66 246	23 312	Wm. Dupelaff to Tom Carlin	12/6/22	500 00	530 00	S. ½, S. E. 9-4-2
67 247	23 305	Wm. Dupelaff to H. R. Dupelaff	12/6/22	500 00	530 00	N. ½, S. E. 9-4-2
68 248	23 102	R. M. Quartermouse to W. J. Dillon	2/20/22	200 00	240 00	N. W., S. W. 30-4-2
69 249	23 149	Geo. Osborne to J. S. Pollard	3/27/22	1 200 00	640 00	S. E. 34-4-2 Ex. 1 Ac. S. W. corner
70 250	23 131	C. Cobb to Della Montgomery	3/10/22	500 00	160 00	S. E., N. W. 33-4-1
[fol. 281] 251	71 23 260	Ollie Johnson to James Scuiley	8/21/22	500 00	200 00	W. ½, W. ½, S. E. 9-4-1
252	23 141	R. G. Richardson to A. C. Poor	3/10/22	700 00	160 00	N. W., S. W. 31-3-3
253	X-5 396	L. Stortha to Sam Dennison	12/22/22	51 000 00	6 720 00	(For description see exhibit "B" to Dennison's Deposition)
[fol. 282] 253-A	Y-5 384	H. G. Allen to J. E. McPherson	9/9/22	13 200 00	1 200 00	S. ½, N. W., N. ½, S. W., S. E., S. W., S. W., S. E., 3-4-3 N. E., N. W., W. ½, N. E. 10-4-3

Arkansas County, Southern District

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Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 283] 254 Y-5 367	G. A. Rawles to Realty Imp. Co.	5/26/23	1,205.00	330.00	Frl. N. ½, S. W. 9-5-5 84.41 Ac.
72 23 369 255	J. M. Simpson to John Rodgers	2/10/23	2,000.00 and other con.	680.00	N. ½, N. W. 28-5-4 80 Ac.
256 23 565	J. D. McGraw to S. Norman	12/31/23	1,500.00	420.00	S. ½, N. W. 10-6-2
257 23 563	H. C. Carey to M. A. Anderson	10/25/23	350.00	100.00	Frl. S. E., N. E. 23-6-2 24 Ac.
258 23 543	J. P. Fletcher to J. A. McGahhey	12/8/23	1,680.00	540.00	S. W., S. E., S. E., S. W. 11-6-3
73 23 471 259	A. D. Swan to Lillie Wulfekoetter & Minnie Grottendiek	8/23/23	500.00	240.00	S. E., S. W. 14-6-3 Ex. 8 Ac. in N. W. Cor. & 13 Ac. in S. W. corner
260 23 454	C. E. Laston to R. A. Ellis	2/27/23	1,500.00	200.00	S. W., N. E. 35-5-4 S. W., N. W. 26-6-3, S. ½, W. ½ E. ½, N. W. 26-6-3
74 23 412 261	A. J. Hagerty to L. A. Black	3/26/23	2,000.00	1,000.00	E. ½, N. W. 19-6-4
75 23 490 262	L. A. Black to G. Musgrove	8/18/23	200.00	250.00	N. E., N. E. 24-6-5
[fol. 284] 76 23 505 263	L. O. Wofford to P. D. Cordevant	5/28/23	200.00	80.00	N. ½, N. E., S. E. 28-7-2

EXHIBIT A TO STIPULATION—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
77 264	X-5 328	F. Majdes to Eva Freeman	1/25/23	1,200.00	500.00	Pt. Sp. Grant 2397 Twp. 8-2, 120 Ac.
265	23 398	J. A. LaCotta to G. M. Armstrong	3/10/23	550.00	40.00	Old Corner Place 10 Ac. N. E. corner Lot 1, N. E. 4-5-4
266	23 404	R. L. Monsrief to Gillespie Brew. Grs. Co.	1/11/23	1,800.00	70.00	S. 24 Ac. L. 2 N. W. 3-5-3
78 267	23 404	L. C. Schaefer to Pearl An	8/20/23	1,000.00	440.00	W. ½ N. W., 34-5-4
79 268	23 367	L. F. Burnett to Lee Leake	1/4/23	2,549.81	1,470.00	S. W. 32-5-2 Rice land.
80 269	23 394	J. J. Kearns to Miles Butler	2/22/23	200.00	160.00	S. W., S. E., 23-5-2
81 270	23 452	F. W. Spratlin to C. C. Butler	5/17/23	100.00	160.00	S. E., N. W., 13-5-2
82 271	23 389	F. S. Edmondson to Floyd Battle	2/24/23	450.00	200.00	S. W., N. W., 12-5-2
83 272	23 522	Virgil White to Hy. Austen	11/24/23	400.00	160.00	N. E., N. E., 8-5-2
273	23 437	Thure Lofstrom to J. R. Wolff	4/13/23	$1 & assumes $800.00 Mtg.	1,300.00	W. ½, S. W. 29-4-4
274	23 503	J. M. Lowrey to W. N. Beedle	3/6/23	2,200.00	600.00	N. ½, N. E. 17-4-4

84 275	23	463		I. R. Lee to R. I. Alter	6/12/23	3,500.00	1,910.00	S. E. 23, S. W., S. E. 25-4-4
[fol. 285]	276	23	424	Fred O. Bannon to K. K. Council	3/31/23	6,400.00	2,000.00	N. E. 22-4-4
277	23	334		G. H. Rawles to C. R. Norton et al.	1/8/23	500.00	160.00	S. E., S. E. 13-4-4
278	23	460		H. E. Brierton to B. E. Allen et al.	3/2/23	4,200.00	880.00	N. ½, S. E., N. W., S. N. ½ N. W. 10-4-4
85 279	23	564		R. O. Burke to J. L. Cartmell	11/14/23	1,250.00	1,010.00	S. W. 8-4-4
280	23	456		Laura Hillman to Asa Moss	2/6/23	8,000.00	2,600.00	S. E. 4-4-4 Rice land
86 281	23	558		P. A. Douglass to L. C. Douglass	12/26/23	400.00	240.00	N. W., S. W., N. ½, S. W., S. W. 35-4-3
282	23	460		B. H. Turner et al. to L. A. Black	1/31/23	20,000.00	4,300.00	S. W. & S. ½, S. E. L. 5 (or S. E., N. W.) S. ½, S. W. N. W. (or S. ½, L. 4, N. W.) 5-5-3, S. ¼, W. ½, N. E. 32-4-3
283	23	529		E. L. Keller to W. O. Farrier	11/16/23	2,200.00	480.00	S. E., S. W. 20 N. ½, N. E. 29-4-3
87 284	24	85		Wendell Pickerill to May Farrin	10/27/23	967.00	420.00	S. ½, S. E. 20-4-3
285	23	377		W. H. Norsworthy to Leo Woods	2/15/23	8,000.00	2,100.00	½ Int., S. ½, 17-4-2

EXHIBIT A TO STIPULATION—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
286 23 308	W. A. Harmon to J. W. Henderson	2/8/23	$1.00 & other valuable considerations	1,360.00	S. W. 27, W. ½, S. E. 28, N. E., S. E. 28, 4-2
287 23 528	R. F. Underwood to W. E. Rowland	11/16/23	1,400.00	360.00	S. W., N. W. 29-4-1 N. E., S. E. 29-4-1
(fol. 286) 88 Y-5 65 288	Jas. Muir et al. to W. H. Norsworthy	3/23/23	3,200.00	1,800.00	N. ½, S. E. 18-4-1
89 23 502 289	Jas. Scully to G. W. Jones	9/22/23	500.00	200.00	W. ½, W. ½, S. E. 9-4-1
290 23 485	R. I. Cullipher to I. A. Black	8/8/23	1,000.00	200.00	N. E., N. E. 35-3-3
90 23 497 291	J. W. Allen to Peoples Sav. Bank	9/5/23	450.00	520.00	N. W. 28-3-3 Ex. 20 Ac. N. E. Corner
292 X-5 456	L. Stortha to The Mengel Co.	3/27/23	142,449.80	28,460.00	Lots 6, 7, 8, 9, 10, S. W. Sec. 19-8-1, Lots 1 to 13, Frl. 30-8-1, Lots 1, 2, 3, 4, W. ½ Sec. 31-8-1, Frl. Sec. 2-7-2, Frl. N. E., N. W. 3-7-2, S. E. 3-7-2, E. ½ 10-7-2, All 11-7-2, All 12-7-2, N. ½, 14-7-2, S. W. 14-7-2, E. ½ 22-7-2, W. ½, 23-7-2, All Frl. 26-7-2, E. ½, E. ½, 27-7-2, All 34-7-2, W. ½ 35-7-2, Frl. S. W. 36 [illegible] Frl. All

[fol. 287] 292-A Y-5 330	C. C. Calvert Tr to W. K. Woodcock, Tr.	10/9/23	500 00	80 00	½ Und. Int. in S. E., N. W. 35-6-4
292-B X-5 393	S. B. Dennison to J. R. Buchignoni	3/10/23	10,200 00	1,344 00	All Frl. 13, N. ½, & S. E. 14, N. ½, N. E., S. W. N. E. 23, N. ½, & S. W. 24, 3-2 (1/5 Int. timber)
292-C X-5 390	S. B. Dennison to M. G. Bailey	3/10/23	10,200 00	1,344 00	(Same as last above 1/5 Int. Timber)
292-D X-5 388	S. B. Dennison to H. F. Lander	3/10/23	10,200 00	1,344 00	(Sam 1/5 Int. Timber.)
292-E X-5 387	S. B. Dennison to J. M. Lander	3/10/23	10,200 00	1,344 00	(Same 1/5 Int. Tim.)

Arkansas County, Southern District

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Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 288] 293 616 23	C. Almond to Stella Coffman	1/31/24	2,200 00	600 00	Lots 1 and 2 Block 6, Gillett
294 79 24	Anna Davis to E. T. Leslie	11/15/23	2,000 00	550 00	Lots 9 and 10, Block 5, Gillett
295 586 23	T. C. Alexander, Trustee to A. M. Bohnert	1/7/24	10,000 00	2,100 00	S. E. 30-7-3, N. ½, N. E. 31-7-3 Rice land.
91 592 23 296	L. A. Black to Rosalie C. Lee	2/21/24	346 00	400 00	N. ½, N. W., 24-6-5 less canal

EXHIBIT A TO STIPULATION—Continued

Record, page and vol	Grantor and grantee	Date	Consideration	Assessed value	Description
92 590 23 297	C. E. Laston & Wife to D. T. Sanders	2/25/24	1,000.00	580.00	W. ½, N. E., N. W. ¼, S. W., N. W. 26-6-3
93 576 23 298	W. P. Mays to Sarah Edmonson	1/21/24	400.00	180.00	S. E., S. E., N. W. ¼, E. ½, N. E., S. W. ¼, E. ½, W. ½, N. E., S. W. 40 Ac 11-6-2
299 598 23	E. B. Gibson to L. A. Black	2/28/24	4,000.00	1,150.00	N. E. 7-4-2, Rice land
300 603 23	J. D. Tyner to C. M. Brotten	3/12/24	4,000.00	780.00	S. W., S. W. 6-4-3 S. E., S. W. 6-4-3 E. ½, N. W. 7-4-3
94 608 23 301	J. F. Hamilton to A. Sorenson	3/24/24	2,100.00	800.00	E. ½, S. E. 3-4-3
95 614 23 302	Arch Ax to L. Wheatley	1/4/24	600.00	200.00	N. W., S. W. 24-6-5
[fol. 289] 96 620 23 303	John Hill to T. M. Word	4/15/24	500.00	260.00	N. W., N. E. 16-3-2
97 621 23 304	P. M. Haler to F. Currie	4/3/24	600.00	420.00	S. ½, S. W. 9-5-2
98 636 23 305	E. C. Thompson to W. E. Cooksey	3/12/24	650.00	320.00	E. ½, S. W. 12-6-4
306 24 24	H. R. Ragsdale to J. W. Henderson	4/2/24	950.00	260.00	S. E., S. W. 27-4-2

307	33	24	John Rodgers to George Rodgers	7/1/24	4,000 00	620 00	N. ½, S. E. 36-5-5 2 Ac. in S. E., N. E. 36-5-5
308	54	24	J. E. Brown to W. H. Miller	5/20/24	800 00	160 00	N. E., N. W. 14-6-4
99 309	56	24	R. F. Brockman to W. F. Pike et al.	4/5/24	400 00	160 00	N. W., N. E. 23-4-3
310	61	24	J. W. Allen to O. F. Allen	10/4/24	1,100 00	320 00	N. W., S. E. N. E., S. W. } 14-6-3 less highway
100 311	63	24	H. G. Frank to W. B. Fulton	10/21/24	12,500 00	4,280 00	N. E. 23 S. ½, 23 } 5-4 W. ½, N. E. 26
312	80	24	J. A. Price to S. M. Bush, Trustee	10/9/24	2,750 00	480 00	E. of C., S. E., N. W. 28-4-1 E. of C. Frl. W. ½, N. W. 28-4-1 E. of C., S. W., N. E. 28-4-1
313	90	24	E. B. Gibson to Wm. Dupslaff	11/29/24	17,000 00	4,200 00	S. ½, 17-4-2
[fol. 290]	314	93	24 J. M. Simpson to John Rodgers	12/8/24	6,400 00	1,600 00	N. W. 29-5-4
315	98	24	John Furlong to W. H. Miller	11/24/24	600 00	100 00	N. W., S. W. 14-6-4
316	131	24	A. Montgomery to D. Garrison	12/30/24	3,000 00	800 00	Frl. W. ½, N. W. 31-5-4 108.86 Ac.
317	A-6	183	J. T. Wylie to S. M. Bush	1/15/24	$10,000.00 cash in hand paid total purchase price $240,660.00	2,240 00	For Book Record and Description see Exhibit "C" to deposition of Dennison.

EXHIBIT A TO STIPULATION—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 291] 317-A Z-5 125	J. H. Hamlin & Son to F. T. Dooley	1/18/24	28,000.00	5,540.00	S. E., N. E., 24-7-2 N. E., S. E., 20-5-1 N. E., N. W., 9-5-2 N. E., N. E., 11-5-2 S. E., S. E., 11-5-2 S. W., N. W., 13-5-2 Frl. S. E., S. W., 13-5-2 N. E., N. E., 14-5-2 N. E., S. W., 35-5-2 Frl. N. E., S. E., 36-5-2 S. ½, N. E., 1-6-2 Frl. N. ½, N. W. 1-6-2 S. E., N. W. 1-6-2 S. ½, 1-6-2 S. E., N. E., 2-6-2 S. W., S. W., 12-6-2 W. ½, N. E., 13-6-2 N. ½, N. W., 13-6-2 S. E., N. W., 13-6-2 S. W., N. W., 14-6-2 N. W., S. W., 22-6-2 N. W., N. E., 24-6-2
317-B Z-5 113	Sarah Conner to Cas. U. Miller	5/31/24	24,000.00	360.00	N. ½ & N. ½, S. W. 14-5-4 S. W., 11-5-4 N. W., N. E., 15-5-4

Arkansas County, Southern District

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Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 292] 318 C-6 84	L. Storthz to White River Lumber Company	4/14/26 1925 Assmt.	20,853 25	6,420 00	(Approximately 1700 acres at $12—see deposition of W. W. Keaton) (1677 78 acres, exactly as recited in deed.)

(Stipulation endorsed:) #2296. Arkansas Chancery Court, Southern District. State of Arkansas ex rel. H. W. Applegate, Attorney General, Plaintiff, vs. White River Lumber Company, Defendant. Stipulation. Filed in my office Dec. 6th, 1926. Duce Pike, Clerk. John M. Rose, for Plaintiff. Busbee, Pugh & Harrison, Attorneys, Little Rock, Arkansas, for Defendant.

[fol. 293] In the Arkansas Chancery Court, Southern District

State of Arkansas ex Rel. H. W. Applegate, as Attorney General, Plaintiff,

vs.

White River Lumber Company, Defendant

Stipulation

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the following sheets contain true and correct recitals of the facts and figures contained in various deeds conveying real estate in Arkansas county, Arkansas, which deeds now appear of record in the office of the Circuit Clerk and Recorder as stated herein. It is also agreed that said sheets correctly state the actual assessment of each of said tracts for taxation for the respective years mentioned. It is agreed that this stipulation may be introduced and read in evidence on behalf of plaintiff as evidence of the contents of said deeds, but the defendant hereby expressly objects to the admissibility or competency of said facts and figures to show the actual consideration paid for each and all of said tracts of land, because not the best evidence thereof.

R. E. L. Johnson, John M. Rose, Special Counsel for Plaintiff. Buzbee, Pugh & Harrison, T. S. B., Sol'rs for Deft.

[fol. 294] LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY, SHOWING CONSIDERATION RECITED IN THE DEED AND THE ACTUAL ASSESSMENT OF THE PROPERTY FOR TAXATION AS SHOWN BY THE RECORD OF THE COUNTY CLERK

In Nos. 1 to 100, inclusive, the various tracts of land are assessed at from 30% to above 100% of the consideration recited in the deeds. In Nos. 101 to 240, inclusive, the lands are assessed at from 33⅓ to above 100% of the consideration recited in the deeds.

Arkansas County, Southern District

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 295] 1 19	J. C. Wemrich to F. E. Collier	11/15/26	$4,800.00	1,560.00	S. E., S. W. 6-7-3 40 S. E., S. E. 8 40 S. W., S. E. 8 40 S. W., S. W. 9-7-3 40 160
1-½ 21	J. J. Fricker to I. R. Hollenger	2/17/19	1,600.00	640.00	Rice land N. ½, S. W. 13-4-4
2 22	Lee Woods to A. Woods	12/18/19	1,000.00	210.00	Lt. 1 N. W. N. E., N. W. } 5-5-2 76.61 Ac.
3 357 22	W. F. Kay to H. B. Allen Sickel, et al.	11/11/19	25,200.00	9,400.00	S. ½ 33 S. ½, N. ½ 33 N. W., N. W. 33 N. E., N. E. 33 } 3-3 E. ½, E. ½ 32 720 Ac.
4 534 21	Ed Satterlee to H. L. Brown	12/17/19	500.00	250.00	S. end S. E. 25-4-2 50 Ac.
5 570 21	E. B. Frownfelter to A. J. Ambuhl	8/15/19	4,000.00	2,500.00	S. W. 20-4-4
6 440 23	S. M. McAdams to C. E. Worley	12/18/19	9,000.00	3,240.00	N. E. 14-5-4
7 547 21	J. E. Cook to D. P. Milliken	1/20/19	1,000.00	300.00	1 Acre in sq. in. N. W. corner of S. W. 14-5-5

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 296] 8 533 21	J. D. Edmondson to A. L. Kitselman et al.	11/26/19	400 00	240 00	S. W., N. E. 13-6-3 W. ½, N. W., N. E. 13-6-3
9 607 23	J. A. Gammon to A. B. Adams	12/31/19	400 00	160 00	N. W., N. E. 7-6-2
10 471 22	L. A. Black to Jim Miller	1/1/19	4,600 00	1,800 00	E. ½, S. E. 19-4-2
11 509 21	Frank Whiting to H. F. Sykes	11/24/19	300 00	100 00	Part Sp. Grant 2403 Township 7 & 8 S. 60 Ac.
12 506 21	M. R. Crandall to W. D. Tillinghast	1/5/20	700 00	260 00	Lots 5 and 6, Block 14, Gillett.
13 166 22	R. W. Menard to J. Z. Menard	1/12/20	700 00	300 00	Lot 2 Sp. Gr. 2343.
14 429 24	B. S. Norsworthy to W. H. Norsworthy	6/7/20	12,000 00	4,710 00	S. E. 25, N. E. 26, N. ½, S. E. 36 N. ½, S. W. 36 3-2, N. W. 31, N. ½, S. W. 31, W. ½, S. E. 31 3-1, N. W., N. W. 5, 4-1 N. E., N. W. 5-4-1
15 22 278	G. Roush to I. B. Massey	5/8/20	800 00	270 00	Pt. W. ½, Lot 1 N. E. 5-8-2, 22, 25 Ac., Lot 1, N. W. 5-8-2, 44 50 Ac.
16 22 286	W. H. Bonner to Anderson Tully Co.	8/3/20	1,500 00	1,480 00	Frl. N. W. 30-8-1, Frl. N. E. 30-8-1 with accretions now north of river.

[fol. 297]	17	22	291	Ada Patterson to L. A. Auston	8/14/20	200 00	100 00	E. ½, N. W., S. E. 21-7-3 20 Ac.
18	21	630		A. H. Richter	2/5/20	200 00	100 00	E. ½, N. W., S. E. 21-7-3
19	21	574		Irl Odenbaugh to W. P. Elrod	1/17/20	1 000 00	350 00	E. ½, N. E., N. W. 9-7-3 20 Ac.
20	22	3		M. J. Taylor to W. T. Merritt	1/3/20	400 00	560 00	S. W., N. W. 4-7-3 40 Ac.
21	22	190		R. L. Wofford to J. W. Sandage	4/14/20	300 00	120 00	N. E., N. E. 16-7-2
22	22	176		Rosa Malcomb to W. L. Cross	1/15/20	400 00	160 00	40 Ac. S. side Frl. E. ½, N. E. 4-7-2
23	22	306		W. H. Cummings to L. A. Black	4/17/20	1,913 00	1,500 00	S. E. ¼, 12-6-5
24	21	562		A. L. Youngblood to W. S. Probst	1/9/20	500 00	220 00	Frl. N. ½, N. E. 33-6-4
25	22	67		L. Behman to Erich Lehman	2/25/20	7,700 00	2,680 00	N. W. 21-6-3 Ex. 12 Ac. S. S. of N. W. ¼
26	22	309		L. A. Black to Mrs. L. A. Black	3/2/20	15,000 00	5,200 00	S. E., S. ½ N. E., 24-5-5 S. E., 13-5-5
27	22	325		Thos. J. Moher to Hy Wrape Co.	9/27/20	1,000 00	320 00	W. ½, S. W. 20-5-5
28	22	168		E. F. Park, et al. to W. S. Probst, et al.	2/23/20	1,179 10	420 00	Frl. N. ½ S. W. 19-6-2 N. W., S. W. 26-5-4
[fol. 298]	29	22	300	Chas. Schauer to L. E. Swan	9/2/20	200 00	80 00	E. ½, S. W., S. W., 14-5-4

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
30	22 39	T. M. Jones to Carl Owens	3/1/20	2,850.00	1,000.00	5 Ac. in Sq. S. W. cor. Lot 4 N. W. 3-5-3
31	22 358	Jno. Parker to Wm. J. Clemon	10/30/20	420.00	150.00	Frl. S. E. S. W. 36-5-2
32	22 225	L. K. McAdams to J. H. Tucker	1/27/20	250.00	240.00	W. ½ S. W. 35-5-2
33	21 623	J. H. Tucker to Wm. Lack	2/7/20	315.00	150.00	N. 50 Ac. W. ½ S. W. 35-5-2
34	22 121	J. T. Wright to C. R. Fox	3/3/20	200.00	80.00	W. ½ S. E. S. E. 17-5-2
35	22 66	R. H. McNeill to W. F. Schallhorn	2/2/20	2,800.00	1,040.00	E. ½ N. E. S. E., S. W., S. W., 15-5-2 280 Ac.
36	22 319	E. J. Walton to Milton Holbert	1/16/20	2,200.00	920.00	S. W., N. W., S. E., S. ½ S. W., N. E., 14-5-2 220 Ac.
37	22 367	S. C. Snyder to Robt. Kestner	2/18/20	854.75	2,000.00	Frl. N. W. 3-4-4 166.45 Ac.
38	22 73	W. C. Poynter to Gilbert Rockwell	2/26/20	1,000.00	400.00	S. W., N. W., N. W., S. W. 28-4-3
[fol. 299]	39 21 585	Chas. Sanders to Sam Henderson, et al.	1/23/20	600.00	200.00	S. W., N. W. 24-4-3
40	22 145	B. F. Reed to J. V. Jacobs, Sr.	4/5/20	350.00	160.00	N. E., S. W. 15-4-3

41	22	281	G. W. Lacotta to W. J. Dillion	7/7/20	200 00	160 00	N. W., N. W., 30-4-2 80 Ac.
42	22	193	H. L. Brown to G. F. Williams, et al	4/28/20	750 00	250 00	Part S. end S. E. 25-4-2 50 Ac.
43	22	152	W. H. Norsworthy to J. A. West	2/18/20	600 00	230 00	W. ½, N. ½, N. E. 29-4-1
44	22	155	R. M. Davis to George West	1/12/20	500 00	210 00	N. W., N. W., 21-4-1
45	22	18	J. W. Allen to R. M. Harris	1/27/20	480 00	160 00	N. E., N. W. 29-3-3 40 Ac.
46	22	269	Mrs. W. A. Merritt to L. F. Burnett	7/13/20	500 00	200 00	S. E., N. W. 24-3-3
47	405	22	R. Bonner to H. H. Chatfield	1/7/21	400 00	160 00	S. E., N. W., 1-7-3
48	503	22	Geo. Weinrich to A. C. Weinrich	7/20/21	5,000 00	1,920 00	N. W., S. W., N. E., S. W., Ec. ½ Ac. for road S. ½, N. W., S. E. N. E., S. E. 8-7-3 N. W., S. W., 9-7-3 N. ½, N. E., 21-6-2 80 Ac.
[fol. 300] 49	5	23	R. H. Whitehead to L. F. Loggins	1/31/21	1,000 00	400 00	
50	46	23	C. W. Hozan to H. W. Bacheller	11/10/21	1,000 00	300 00	S. ½, N. ½, S. W., 26-5-5 40 Ac.

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
51	527 22	A. J. Bailey to J. P. Bailey	5/2/21	14,000 00	4,800 00	S. ½, 23 N. E., 23 W. ½, N. E. 26 560 Ac. } 5-4
52	302 23	J. B. Morgan to C. G. Butler	8/21/21	1,000 00	400 00	W. ½, N. E., 13-5-2
53	552 22	H. C. Andrews to L. K. McAdams, et al.	5/21/21	625 00	220 00	S. W., N. E., 33-4-3
54	55 23	Cecil Marre to C. E. Crosby	12/28/21	450 00	160 00	S. E., S. E., 14-4-3 40 Ac.
55	23 270	G. F. Cox to M. E. Cox	10/21/22	100 00	400 00	E. pt. of E. pt. Sp. Gr. 2396, 160 Ac.
56	W-5 157	Virgie Haller et al. to W. W. Roberts	8/3/22	1,900 00	640 00	E. ½, E. ½, 1-6-4
57	23 255	A. J. Hammett to W. W. Wilson	9/18/22	700 00	240 00	W. ½, N. E., 11-6-4
58	23 273	P. M. Haler to T. J. Brown	10/28/22	2,000 00	860 00	Frl. N. W., 5-6-2 214.44 Ac.
59	23 147	D. W. Garrison to L. C. Shafer	3/31/22	2,000 00	1,000 00	W. ½, N. W., 34-5-4
	fol. 301 60 23 272	J. C. Hornbeck to L. A. Black	8/8/22	800 00	600 00	N. E., N. E., 26-5-4

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61	23	307	Paul Haller to L. F. Burnett	12/8/22	2,000 00	1,160 00	S. W., 32-5-2, except 2 Ac. S. E., corner & 10 Ac. S. W., corner.
62	23	321	T. J. Brown to P. M. Haler	10/28/22	1,000 00	420 00	S. ½, S. W., 9-5-2
63	23	290	Ethel Mer. Co. to Berry London	11/17/22	835 00	420 00	Frl. W. ½, S. W., 1-5-2
64	23	340	Thomas Criswell to L. J. Criswell	12/22/22	400 00	220 00	N. E., N. W., 17-5-1
65	23	70	Homer Dickens to R. C. Cox	1/12/22	600 00	200 00	S. ½, W. ½, S. W., 4-5-1 40 Ac.
66	23	312	Wm. Dupslaff to Tom Carlin	12/6/22	500 00	530 00	S. ½, S. E., 9-4-2
67	23	305	Wm. Dupslaff to H. R. Dupslaff	12/6/22	500 00	530 00	N. ½, S. E., 9-4-2
68	23	102	R. M. Quarternous to W. J. Dillon	2/20/22	200 00	240 00	N. W., S. W., 30-4-2
69	23	149	Geo. Osborne to J. S. Pollard	3/27/22	1,200 00	640 00	S. E., 34-4-2 Ex. 1 Ac. S. W. Corner
70	23	131	C. Cobb to Della Montgomery	3/10/22	500 00	190 00	S. E., N. W., 33-4-1
71	23	200	Ollie Johnson to James Sculley	8/31/22	500 00	200 00	W. ½, W. ½, S. E., 9-4-1
[fol. 302] 72	23	360	J. M. Simpson to John Rodgers	2/10/23	2,000 00 & other Con.	680 00	N. ½, N. W., 28-5-4 80 Ac.

Lists of Various Deeds Recorded in Arkansas County—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
73	23 671	A. D. Swan to Lillie Wulfekuetter Minnie Grottenhiek	8/23/23	500 00	240 00	S. E., S. W., 14-6-3 Ex. 8 Ac. in N. W. Cor. & 13 Ac. in S. W. Corner S. W., N. E., 35-5-4
74	23 612	A. J. Hagerty to L. A. Black	3/26/23	2,000 00	1,000 00	E. ½, N. W., 19-6-4
75	23 690	L. A. Black to G. Musgrove	8/18/23	200 00	250 00	N. E., N. E., 24-6-5
76	23 593	L. O. Wofford to P. D. Cordevant	5/28/23	200 00	80 00	N. ½, N. E., S. E., 28-7-2
77	X 5 326	F. Maples to Eva Freeman	1/25/23	1,200 00	500 00	Pt. Sp. Grant 2397 Twp. 8-2, 120 Ac. Old Corner Place
78	23 694	L. C. Schafer to Pearl Ax	8/20/23	1,000 00	440 00	W. ½, N. W., 34-5-4
79	23 367	L. F. Burnett to Lee Leslie	1/4/23	2,549 81	1,470 00	S. W., 32-5-2, Rice Land
80	23 394	J. J. Kearns to Miles Butler	2/22/23	200 00	160 00	S. W., S. E., 2305-2
81	23 452	F. W. Spratlin to C. C. Butler	5/17/23	100 00	160 00	S. E., N. W., 13-5-2
82	23 389	F. S. Edmondson to Floyd Battle	2/24/23	450 00	200 00	S. W., N. W., 12-5-2

[fol. 303]	83	23	538	Virgil White to Hy Austen	11/24/23	400 00	160 00	N. E., N. E., 8-5-2
84	23	463	I. R. Lee to R. I. Alter	6/12/23	3,500 00	1,910 00	S. E., 23, S. W., S. E., 25-4-4
85	23	564	R. O. Burke to J. L. Cartmell	11/14/23	1,250 00	1,010 00	S. W., 8-4-4
86	23	558	P. A. Douglass to L. C. Douglass	12/26/23	400 00	240 00	N. W., S. W., N. ½, S. W., S. W., 35-4-3
87	24	85	Wendell Pickerill to May Farrin	10/27/23	967 00	420 00	S. ½, S. E., 20-4-3
88	Y-5	65	Jas. Muir, et al. to W. H. Norsworthy	3/23/23	3,200 00	1,800 00	N. ½, S. E., 18-4-1
89	23	502	Jas. Scully to G. W. Jones	9/22/23	500 00	200 00	W. ½, W. ½, S. E., 9-4-1
90	23	497	J. W. Allen to Peoples Sav. Bank	9/5/23	450 00	520 00	N. W., 28-3-3, Ex. 30 Ac. N. E. corner
91	592	23	L. A. Black to Rosalie C. Lee	2/21/24	346 00	400 00	N. ½, N. W., 24-6-5 less canal
92	590	23	C. E. Liston & Wife to D. T. Sanders	2/25/24	1,000 00	580 00	W. ½, N. E., N. W., N. W., N. W., } 26-6-3
93	576	23	W. P. Mays to Sarah Edmonson	1/21/24	400 00	180 00	S. E., S. E., N. W., E. ½, N. E., S. W., E. ½, W. ½, N. E., S. W., 40 Ac.

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
[Vol. 204] 94 608 23	J. F. Hamilton to A. Sorenson	3/24/24	2,100.00	800.00	E. ½, S. E. 3-4-3
95 614 23	Arch Ax to L. Wheatley	1/4/24	600.00	200.00	N. W., S. W., 24-6-5
96 620 23	John Hill to T. M. Word	4/15/24	500.00	200.00	N. W., N. E. 16-3-2
97 621 23	P. M. Hoke to F. Currie	4/3/24	600.00	420.00	S. ½, S. W. 9-5-2
98 636 23	E. C. Thompson to W. E. Cooksey	3/12/24	650.00	320.00	E. ½, S. W. 12-6-4
99 56 24	R. F. Brockman to W. W. Pike, et al	4/5/24	400.00	160.00	N. W., N. E. 23-4-3
100 63 24	H. G. Frank to W. B. Fulton	10/21/24	12,500.00	4,280.00	N. E., 23 S. ½, 23 W. ½, N. E. 26
101 12-B	C. V. VanDusen & Wife to H. J. Kelley	Jan. 11, 1915	1,200.00	600.00	Lts. 1-2 Blk. 5 Im. Co's. Add, Stuttgart
102 213-B	Christ Lorenz & Wife to Roelph S. Rhodes	Dec. 8, 1915	10,000.00	3,400.00	N. ½, Sec. 12- 48-8. W. 320 A.
103 353-B	J. I. Porter & Wife to Harry E. Bovay	June 1, 1916	4,000.00	1,600.00	Lt. 7-8 Blk. 2 Harper's Addn, Stuttgart

104	24-C		J. G. Manser & Wife to Dr. A. Fowler & V. D. Hardin	Dec. 29, 1916	267 50	480 00	N. E. ¼, Sec. 2-48, 6 W-160 41 Acres
[fol. 305]	105	43-C	C. F. Clark to Mattie W. Clark	June 4, 1917	3,000 00	1,250 00	Lots 11-12 Blk. 3, Resnick's Addn. Stuttgart
106	89-C		O. J. Resketon & Wife to Wm. Graham & Wife	Jan. 12, 1917	5,000 00	2,000 00	E. ½, N. E. ¼ & E. ½, N. W. ¼, Sec. 8-38.-4W.-160 A.
107	555-E		Chas. E. Spicer to J. M. Spicer	Nov. 22, 1920	2,400 00	2,000 00	S. E. ¼, Sec. 35-38.-5W. 160 A.
108	551-F		Mable M. Potter Kruse (Feme Sole) to G. C. Potter	March 6, 1923	9,000 00	5,130 00	S. W. ¼, Sec. 14 S. E. ¼, Sec. 15, N. W. ¼ N. W. ¼ & S. ½, N. W. ¼ Sec. 23-48.-5W. 440 A.
109	7-H		Mary L. Moffitt to Roy & Ruth Vice	Dec. 17, 1925	8,000 00	3,000 00	N. W. ¼, Sec. 27-38.-4W. 160 A.
110	626	19	John M. Johnson to E. E. Boodwell	1/1/17	8,500 00	4,000 00	S. E. ¼, Sec. 18-5-3
111	432	18	Mercy Pierce, et al. to J. M. Simpson assumes bal. Mtg.	2/15/15	4,000 00 1,825 00	2,240 00	N. ½, Sec. 17-58. 4W.—320 A.
112	443	18	John Jenkins to L. A. Black	3/6/15	400 00	600 00	S. W. ¼, Sec. 36-48.-2W.-160 A.
113	441	18	Viola Williams to L. A. Black	3/2/15	50 00 conveys all my int.	200 00	for ½ int. Und. ½, In. N. ½ N. W. ¼, Sec. 12-58.-2W.
[fol. 306]	114	444 18	Annie W. Rawlings, widow to M. H. Knoll	3/9/15	5,000 00	2,500 00	N. E. ¼, Sec. 4-48. 3W.-183.09 A.

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

	Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
115	445 18	Wm. Morten- to John Michiels	3/10/15	1,000 00	760 00 (error in description)	S. W. ¼, N. W. ¼, 40 A. & pt. S. E., N. W. ¼ 225 A., Sec. 17 6S–3W, 42.25 A.
116	469 18	W. H. Norsworthy to J. B. Horton	1/2/15	400 00	160 00	N. W. ¼, S. W. ¼ Sec. 9–5S– 1W–39 A.
117	509 18	Tom Roach & Wife to S. W. Ray	5/31/15	400 00	220 00	S. E. ¼, N. E. ¼ Sec. 26–4 S. 3W–40 A.
118	515 18	Ophelia C. Mattmiller to Frances A. Gaff	7/13/14	450 00	320 00	Lot 12 & W. ½ 11 Block 99, Gillett
119	13 19	Parker C. Ewing to John C. Smidt	11/9/15	1,200 00	960 00	N. E. ¼, Sec. 29 S. ½, S. E. ¼, 20– 3S–3W–320 A.
120	111 19	Emma Merritt, widow to R. T. Bullock	3/16/16	800 00	400 00	S. ½, N. E. ¼ Sec. 34–5S 4W–80 A.
121	118 19	A. D. Swan & Wife to J. H. Granthour	2/28/16	1,000 00	800 00	S. ½, S. W. ¼ Sec. 4–5S– 4W–80 A.
[fol. 307]	122 121 19	Russ Thomas, et al. to E. W. McLensky	3/7/16	8,000 00	4,200 00	W. ½, 320 A. & W. ½, S. E. ¼ Sec. 29 2S– 3W–400 A.
123	213 19	Rebecca Soyer & Husband to Gillett Warehouse Co.	6/15/16	1,200 00	600 00	Blks. 85 & 86 Town of Gillett
124	257 19	J. W. Smidt & Wife to John M. Elles	4/17/16	500 00	400 00	Fct. N. W. ¼, N. W. ¼ Sec. 2–4S–3W. 48.19 A.

125	273	19		Henry Thane & W. to W. H. Bonner	7/18/16	1,500 00	870 00	All Fct. Sec. 31-8S.-2W.-255 A.
Quitclaim Deed								
126	351	19		W. M. Freeman to John Bogwell	6/23/16	500 00	325 00	S. W. ¼, N. E. ¼, Sec. 10-5S.-5W. 40 A.
127	363	19		J. L. Rogan to J. H. Rogan	10/13/16	300 00	200 00	N. W. ¼, S. W. ¼, Sec. 1-4S.-3W.-40 A.
128	466	19		H. P. Brown & Wife to C. R. Fox	1/27/17	8,000 00	3,000 00	S. E. ¼, Sec. 30-5S.-2W.-160 82 A.
129	481	19		Mrs. F. A. Wright, widow to G. T. Bell	1/23/17	3,600 00	1,625 00	N. ½, N. E. ¼, Sec. 22-5S.-5W. 80 A.
[fol. 308] 130		485	19	John J. Van Buskirk to J. A. Smith	12/18/16	2,000 00	1,000 00	E. ½, S. W. ¼, Sec. 5-4S-3W 80
131	491	19		Alice Barnett, single to Arkmo Ldr. Co.	1/12/17	2,500 00	2,000 00	Lots 10-11-12 Blk. 40 DeWitt
132	497	19		A. L. Carter & Wife to L. E. Rhodes	2/5/17	8,000 00	2,750 00	N. ½, N. ½, Sec. 2-5S-5W-136 97
133	574	19		Wm. Schleper & Wife to Rooks & Notho	1/20/17	1,500 00	1,000 00	S. ½, S. W. ¼, Sec. 25-6S-4W 80 Ac.
134	189	20		John S. Belby to J. M. Simpson	10/23/17	400 00	320 00	E. ½, S. E. ¼, Sec. 20-5S-5W 80 Ac.
135	319	20		M. G. Atkins & Wife to John Fietz	12/1/17	1,500 00	500 00	Lots 8-9-10 Blk. 27 Gillett

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
136 343 20	W. S. Quartermous to H. H. Jones	2/25/18	cash 8,500 00 Mtg. 5,115 00 13,615 00	3,400 00	Fct. S. ½, Sec. 1-58-5W 341.29 Ac.
137 381 20	Rebecca Segur & Husband to S. C. Vankerk	3/18/18	4,650 00	2,500 00	N. W. ¼, Sec. 32-68-3W 160 Ac.
138 483 20	J. G. Aten & Wife to H. W. Doty	4/2/18	6,000 00	2,300 00	N. W. ¼, Sec. 22 & N. E., N. E. Sec., 21-48-4W 200 Ac.
(fol. 309) 139 101 21	John M. Ellis & Wife to J. A. McKay	1/29/19	800 00	280 00	E. ½, N. E. ¼, Sec. 17-48-1W 80 Ac.
140 139 21	Lenora Barrow & Husband to Chas. F. Rose	2/8/19	3,000 00	1,000 00	N. W. ¼, Sec. 36-68-4W 160 A.
141 154 21	W. H. Norsworthy & Wife to Mrs. Geo. F. Williams	3/14/19	600 00	200 00	Pt. S. W. ¼, 25-48-2W 50 A.
142 160 21	T. L. Bower & Wife to C. W. Marshall	10/15/18	400 00	210 00	S. W. ¼, N. W. ¼, Sec. 14-78-3W
143 166 21	Hannah Pragner to C. F. Pragner	10/21/18	100 00	50 00	Lot 1 Town of Hillsboro
144 167 21	A. B. Rosson & Wife to D. A. Sevier	12/21/18	500 00	300 00	N. W. ¼, N. W. ¼, S. W. ¼, Sec. 34-48-3W 10 A.
145 171 21	Ed. Simpson & Wife to W. C. Butcher	2/21/19	5,000 00	2,220 00	Lts. 18-19-20-21-22-23 Blk. 11 Gillett

146	221	21	J. A. DuFresne to F. J. & Sophia Moll	4/12/19	1,230.00	450.00	S. ½, Blk. 100 Gillett
147	259	21	L. A. Black & Wife to R. A. Scott	3/20/19	9,000.00	3,500.00	S. W. ¼, Sec. 17-58-3W 160 A.
148	272	21	J. H. Ogell & Wife to L. A. Black	5/20/19	400.00	160.00	N. W. ¼, S. W. ¼, 7-48-3W 40
[fol. 310]	149	275	21	C. M. Young & Wife to G. P. Judson	5/26/19	1,500.00	510.00	N. E. ¼, N. W. ¼, Sec. 9-58-3W 40 A.
150	283	21	John Webster & Wife to J. A. Wright	3/1/19	3,277.00	2,500.00	W. ½, N. E. ¼, & S. 64.23 A. & E. ½, N. W. ¼, Sec. 10-48-2W-140.23 A.
151	289	21	G. W. Hour & Wife to W. J. Bohnert	5/19/19	100.00	60.00	Lts. 8-9, Blk. 1. Thomo's Addn. Gillett
152	292	21	W. L. Walker to Russ Thomas	5/31/19	225.00	75.00	Lots 1-2-3, Blk. 10. Thomo's Addn. Gillett
153	311	21	W. C. Poynter & Wife to J. M. Emis	6/17/19	500.00	200.00	Lts. 1-2. Blk. 5 Gillett
154	3	22	M. J. Taylor to W. T. Merritt	1/3/20	400.00	210.00	S. W. ¼, N. W. ¼, Sec. 14-78-3W
155	17	22	Ray C. Burks & Wife to R. M. Harris & Nuckles	1/19/20	1,600.00	640.00	N. E. ¼, Sec. 29, 38-3W 160 A.
156	59	22	E. J. Sprotlin & Wife to L. A. Black	2/2/20	100.00	560.00	W. ½, N. E., N. W., 20 A. N. W. ¼, N. W. ¼, 40 A S. ½, N. W. ¼, 80 Sec., 34-48-3W
157	66	22	Robt. McNeil & Wife to W. F. Shallhorn	2/2/20	2,800.00	1,040.00	E. ½, N. E. ¼, 80 A., S. E. ¼, 160 A., S. W., S. W. ¼, 40 A., Sec. 16-58-2W 280 A.

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

Record, page and vol.			Grantor and grantee	Date	Consideration	Assessed value	Description
[fol. 311] 158	73	22	W. C. Poynter & Wife to Gilbert Rockwell	2/26/20	1,000 00	400 00	S. W. ¼, N. W. ¼, & N. W. ¼, S. W. ¼, Sec. 28-48-3W 80 A.
159	76	22	F. M. Hill & Wife to M. R. Crandall	12/22/19	500 00	320 00	S. E. ¼, N. E. ¼, & N. E. ¼, N. W. ¼, Sec. 34-58-2W 80 A.
160	281	22	Geo. W. LaCotta to W. J. Dillon	8/7/20	200 00	160 00	N. W. ¼, N. W. ¼, Sec. 30-48-2W 40 A.
161	605	22	W. R. Bonner & Wife to H. H. Chatfield	1/7/21	400 00	160 00	S. E. ¼, N. W. ¼, Sec. 1-78-3W 40 A.
162	627	22	W. H. Norsworthy & Wife to J. A. McKay	3/3/20	300 00	100 00	Blk. 56 St. Charles
163	670	22	J. F. Hamilton & Wife to R. D. Rasco	3/8/21	2,000 00	800 00	E. ½, S. E. ¼, Sec. 3-48-3W 80 A.
164	684	22	R. D. Rasco & Wife to Sarah L. Hamilton	3/23/21	1,750 00	800 00	E. ½, S. E. ¼, Sec. 3-48-3W 80 A.
165	14	23	Dan Milliken & Wife to W. W. Hogan	9/9/21	500 00	300 00	S. ½, N. ½, S. W. ¼, Sec. 26-58-5W
166	18	23	R. M. Quartermous & Wife to J. J. Koerner	11/18/21	50 00	160 00	Fct. S. E. ¼, N. W. ¼, Sec. 13-58-2W
167	30	23	J. E. McDaniel & Wife to P. W. & Winnie Wharton	12/5/21	600 00	300 00	S. E. ¼, N. W. ¼, Sec. 9-48-3W 40 A.
168	31	23	D. E. McClamahan & Wife to Anna L. McClamahan	13/3/21	700 00	320 00	N. E. ¼, N. E. ¼, 24-7-3 & S. ½, S. W. ¼, S. W. ¼, 18-7-2 51 A.

[fol. 312]	169	35	23	M. S. Bansetter, Single to F. Earl Ogenbough	10/8/21	100.00	60.00	Lot 1-2-3-4 Block 16 Branstetter Addn. De Witt
	170	36	23	J. S. Neale to Georgia D. Neal	12/31/21	375.00	270.00	W. ½, S. W. ¼, Sec. 23-48-2W 80 A.
	171	53	23	L. A. Black & Wife to Wm. Wafford	6/22/21	417.18	200.00	Husband & Wife N. E. ¼, N. W. ¼, 27-38-3W 40 A.
	172	55	23	Cecil Morris & Wife to C. E. Crosby	12/28/21	450.00	160.00	S. E. ¼, S. E. ¼, Sec. 14-48-3W 40 A.
	173	67	23	M. H. Norsworthy & Wife to Bank of St. Charles	12/15/21	2,000.00	840.00	N. ½, N. W. ¼, Sec. 5-48-4W 83.36 A.
	174	70	23	Homer Dickens & Wife to Robt. C. Cox	1/22/22	600.00	200.00	S. ½, W. ½, S. W. ¼, Sec. 4-58-1W 40 A.
	175	73	23	J. M. Simpson, single to E. B. Frownfelter	1/18/22	4,825.00	3,600.00	N. W. ¼, Sec. 17-58-4W 16 A.
	176	79	23	Porter Hobbs, et al. to L. A. Block	1/10/22	135.00	150.00	Lot 13, Blk. 1, Carpenter & Sprodlin's Add. Gillett
	177	82	23	O. J. Olsen to C. W. Fox	5/4/14	3,200.00	1,400.00	S. ½, S. E. ¼, 23-58-3W 80 A.
	178	343	23	Bank of St. Charles to Clem Roy	1/10/23	1,500.00	840.00	Fct. N. ½, N. W. ¼, Sec. 5-48-1W 83.36 A.
[fol. 313]	179	346	23	I. M. Bennett to M. G. Bennett	12/22/22	16,000.00	8,660.00	Fct. N. ½, Sec. 4-48-4W 349.10 A.
	180	351	23	Fred E. Morton & Wife to Ethel Branhauer	12/21/22	550.00	250.00	Lot 11-12-Block 73 Gillett

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

	Record, page and vol		Grantor and grantee	Date	Consideration	Assessed value	Description
181	389 23		J. M. Simpson, single to John Rodgers	2/10/23	2,000.00	680.00	N. ½, N. W. ¼, 28-58-4W 80 A.
182	389 23		F. S. Edmonson to Floyd Battle	2/24/23	450.00	200.00	Fct. S. W. ¼, N. W. ¼, Sec. 12-58-2W 43.93 A.
183	393 23		Wm. F. Nordie & Wife to W. E. Conkey	3/1/23	100.00	250.00	W. ½, Lots 7-8-9 Block 57 Gillett
184	397 23		G. M. Armstrong & Wife to Clyde Inman	3/5/23	900.00	560.00	N. ½, N. E. ¼, Sec. 5-58-5W 68.33 A.
185	417 23		S. R. McAdams & Wife to F. H. Storey	4/2/23	3,500.00	1,600.00	E. 24 ft. Lot 9 Block 26 De Witt
186	437 23		L. O. Wofford & Wife to C. J. Hoggan	12/13/23	400.00	160.00	N. W. ¼, S. E. ¼, Sec. 28-78-2W 40 A.
187	437 23		Theresa Lofstrom & Husband to J. R. Wisoff	4/3/23	2,000.00	800.00	W. ½, S. W. ¼, Sec. 29-48-4W 80 A.
188	555 E		Chas. E. Spicer to J. M. Spicer	11/22/20	2,400.00	2,000.00	S. E. ¼, Sec. 35-38-5W 16 A.
Bol. 314	189 511 F		Mable H. Potter Kruse to C. C. Potter	2/6/23	9,000.00	5,130.00	S. W. ¼, 14—S. E. ¼,—15- N. W. ¼, N. W. ¼, 7-8. ½, N. W. ¼, 23-48-5W-440 A.
190	12 B		C. V. VanDusar & Wife to R. J. Kelley	1/11/25	1,200.00	600.00	Lots 1-2 Blk. 5 Im. Co. Addn. Stuttgart

191	172	B	Christ Lorenz & Wife to Ralph S. Rhodes	12/8/15	10,000 00	3,400 00	N. ½, Sec. 12-48-5W 320 A.
192	353	B	J. I. Porter & Wife to Harry E. Borov	6/1/16	4,000 00	1,600 00	Lot 7-8 Blk. 2- Harper's Stuttgart
193	24	C	J. G. Mauser & Wife to Dr. A. Fowler & V. D. Hordur	12/20/16	1,267 50	480 00	Frt. N. E. ¼, Sec. 2-48-6W 169.41 A.
194	43	C	C. F. Clark to Mattie Clark	6/4/16	3,000 00	1,250 00	Lots 11-12-Blk. 3- Reick's Addn. Stuttgart
195	89	C	O. J. Resketon & Wife to Wm. Graham & Wife	1/12/17	5,000 00	2,000 00	E. ½, N. E. ¼, & E. ½, N. W. ¼, Sec. 8-38-4W 160 A.
196	448	23	Morton Leeds to American Im. Co.	4/20/23	900 00	1,640 00	S. E. ¼, E. ½, N. E. ¼, & E. ½, S. W. ¼, 31-38-3W 280.51 A.
197	454	23	C. E. Laston & Wife to Bessie A. Ellis	2/27/23	1,500 00	580 00	S. W., N. W., 26-6-3 S. ½, W. ½, E. ½, N. W., 26-6-3 60 Acres
198	467	23	Chas. M. Bailey & Wife to F. E. Morton	6/8/23	784 44	400 00	W. ½, Blk. 91-Town of Gillett
[fol. 315]	199	475	23	John C. Mitchell to Roy Wilson	4/9/23	800 00	270 00	S. ½, Lots 3-4 Blk. 87 Imp. Co. Addn. DeWitt
200	477	23	J. H. Rathenhoffer & Wife to Cotton States Life Ins. Co.	7/13/23	17,500 00	6,200 00	All Sec. 31-48-3W except N. E. ¼, N. E. ¼, 612 acres
201	497	23	J. W. Allen & Wife to Peoples Savings Bank	9/23/23	450 00	520 00	N. W. ¼, except 30 acres square N. E. cor. Sec. 28-38-3W

LISTS OF VARIOUS DEEDS RECORDED IN ARKANSAS COUNTY—Continued

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
202 503 23	W. C. Butcher & Wife to H. P. & Ada Hubbard	5/17/..	1,000 00	400 00	S. E. ¼, S. E. ¼, Sec. 31-6S-2W 40 A.
203 504 23	Perry Jackson & Wife to H. P. & Ada Hubbard	9/22/23	300 00	180 00	S. E. ¼, N. W. ¼, Sec. 22-6S-2W 40 A.
204 519 23	W. H. Comes & Wife to M. R. Monroe	10/10/23	134 71	180 00	N. ½, S. E. ¼, S. W. ¼, 28-4S-3W 20 A.
205 535 23	S. B. Dennison to Jesse Ward	9/23/23	1,250 00	450 00	Lot 6 & N 50' Lot 7 & 8, Blk. 26, St. Charles
206 538 23	Virgil White & Wife to Henry Austin	11/24/23	400 00	160 00	N. E. ¼, N. E. ¼, Sec. 8-5S-2W 40 A.
207 543 23	J. P. Fletcher & Wife to J. A. McGahey	12/8/23	1,680 00	640 00	S. W. ¼, S. E. ¼, & S. W. ¼, S. W. ¼, Sec. 11-6S-3W 80 A.
[fol. 316] 208 576 23	W. P. Hays & Wife to Sarah Edmonson	1/21/24	400	140	S. E., S. E., N. W., E ½, N. E., S. W., E ½, W. ½, N. E., S. W., 11-6-2 40 A.
209 591 23	P. I. Alter & Wife to Sadie L. Lee	1/28/24	3,500	1,910	S. E. ¼, Sec. 23 & S. W. ¼, S. E. ¼, 25-4S-4W 200 A.
210 595 23	Allen Wright to Wm. Wright	2/13/24	700	600	Lots 3-6-N. W. ¼, Sec. 18-5S-1W 20 A.
211 610 23	Chloee Cobb & Wife to Geo. Williams	3/24/24	200	160	S. E. ¼, N. E. ¼, Except 1 A. Sec. 32-4S-1W-39

212	617	23	J. W. Allen & Wife to Peoples Saving Bank	4/9/24	1,250	2,280	N. E. ¼, 29-6-1-S. W. ¼, N. W. ¼, 22-5-2 S. E. ¼, S. W. ¼, 26-5-2 E. ½, S. W. ¼, 2-6-3 S. ½, N. W. ¼, 13-6-3 & N. E., 17-33 560 A.	
214	626	23	J. W. Allen & Wife to A. D. Swan	4/19/24	100.00 & other valuable considerations.	2,660	All Fct. Sec. 2-8S-2W 677.69 A.	
215	629	23	L. A. Black & Wife to J. R. Nichols	5/8/24	2.50 Rev. S. 1.00 con. 50 cts. stamp	3,100 N. W. ¼, Omitted	S. ½, N. E. ¼, 19-W. ½, S. W. ¼, 20-W. ½, S. W. ¼, 29-All 7S-3W-200A.	
216	635	23	J. V. Kernodle & Wife to J. R. Ray	5/22/24	25	20	Lots 17-18 Blk. 1 Hay's Addn. De Witt	
217	7	24	J. E. McPherson to Maxwell Inv. Co.	3/26/23	13.50 stamp	12,280	S. W. ¼-30-N. W. ¼, N. ½, N. E.-N. ½, S. W. ¼-31-5S-3W 480	
[Fol. 317] 218	7	24	J. E. McPherson to Maxwell Inv. Co.	3/26/23	13.50 stamp	12,280	N. W., S. W. ¼-E. ½, S. W. ¼-E. ½-25-N. E. ¼,-N. E., N. W.-N. E., S. E.-E. ½, N. W.-S. E.-5S-4W-1000 A.	
219	8	24	J. E. McPherson to Maxwell Inv. Co.	3/4/24	6.50	3,970	S. ½, N. W. ¼-N. ½, S. W. ¼-S. W. ¼, S. E.-S. E., S. W.-S. W.-Sec. 3-4S-3W 220.	
220			J. E. McPherson to Maxwell Inv. Co.				N. E., N. W. ¼-W. ½, N. E., Sec. 10-4S-3W 120 A.	
221	9	24	J. E. McPherson to Maxwell Inv. Co.	2/9/23	8.00 stamp	5,000	W. ½, Sec. 1-5-S-4W 351.90 A.	
220	10	24	J. E. McPherson to Maxwell Inv. Co.	10/6/23	6.00 stamp	5,100	S. E. ¼-7 & N. E. ¼, 18-7S-3W 320 A.	

Record, page and vol.	Grantor and grantee	Date	Consideration	Assessed value	Description
223 11 24	J. E. McPherson to Maxwell Inv. Co.	10/6/23	5.00 stamp	3,000	S. ½, N. E. & S. E. ¼, Sec. 28-68-3W 240 A.
224 161 24 Quit claim deed	Chas. Young & Wife to P. A. Douglass	1/7/25	440	200	N. E. ¼, N. W.—Sec. 27-48-3W 40 A.
225 179 24	A. D. Swan & Wife to J. K. Reffel	1/15/25	1,356	2,660	All Fct. Sec. 2-88-2W 677 67
226 180 24	Josephine Stewart, widow, et al. (widow & 1 of 5 heirs) to P. Whiting	2/26/25	500	950	N. E. ¼, Sec. 30, 78-2W 160 A. (Other deeds secured from other heirs.)
227 185 24	Russ Thomas & Wife to E. J. & Lola Jeanwein	3/6/25	1,500	850	Lots 16-17 Blk. 12 Gillett
[fol. 318] 228 239 24	L. A. Black & Wife to Jose Adame	4/13/25	1,200	520	S. ½, N. W. ¼, Sec. 36-58-4W 80 A.
229 260 24	J. E. Pottorff & Wife to Geo. H. Cleveland	7/1/25	350	200	E. ½, S. W. ¼, Sec. 15-78-2W 60 A.
230 279 24	I. C. Gibson et al. to J. S. Sandusky	7/29/25	440	160	Fct. S. W. ¼, N. W. ¼, Sec. 30-68-4W 37 39 A.
231 306 24	J. E. Brown & Wife to J. M. Caldwell	6/9/25	2,400	960	N. E. ¼ & E. ½, S. E. ¼, 10-68-4W 240 A.
232 343 24	Jennie Simone, widow to Ira Drummond	12/15/25	600	370	E. ½, N. E. ¼, Sec. 35-48-2W 80 A.

233	347 ½	24		L. B. Coppo & Wife to W. E. Marcus	12/26/25	600	300	S. W. ¼, S. E. ¼, 20-48-3W 40 A.
234	360	24		W. G. R. Thompson, widower to A. O. Gill	10/17/25	500	440	N. W. ¼, S. E. ¼, Sec. 16-58-5W 40 A.
235	371	24		Ella M. Conner to Oscar & Cordia Murphy	3/27/25	262	160	N. Fct. Pt. N. E. ¼, S. E. ¼, Sec. 19, 78-2W 16 A.
236	374	24		L. J. Creswell to Thos. J. Creswell	12/22/22	400	220	S. E. ¼, N. W. ¼, Sec. 17-58-1W 40 A.
237	375	24		Thos. J. Creswell & Wife to Bob Butler	2/2/25	700	380	S. ½, N. W. ¼, Sec. 17-58-1W 80 A.
238	386	24		Mrs. Kate Fish et al. to L. A. Black	12/4/25	1,800	800	S. ½, S. W. ¼, Sec. 5-48-3W 80 A.
[fol. 319] 239	450	24		Nellie G. Gustene & Husband to Gilbert Frazier	11/16/25	1,000	700	S. ½, S. W. ¼, Sec. 26-38-4W 80 A.
240	503	24		Jim Brown J. W. Bacon & Wife to T. Foston	2/11/25	110	40	Lot 10 & E. ½, Lot 11, Block 26—Imp. Co. Add. De Witt

[File endorsement omitted.]

[fol. 320] IN CHANCERY COURT OF ARKANSAS COUNTY

[Title omitted]

STIPULATION RE ASSESSMENT OF LANDS—Filed Jan. 28, 1927

It is hereby stipulated and agreed by and between counsel for the respective parties herein, as follows:

The lands belonging to defendant in Monroe, Arkansas, Phillips and Desha counties were, in the years mentioned in the complaint assessed in separate tracts as required by statute. Said assessments approximate $4.00 or $5.00 per acre. The assessments of other timber lands in the counties named, for the years mentioned in the complaint, were approximately the same amounts per acre.

If the Court finds that any lands of the defendant have been under-assessed for the years named, it may make an order designating said lands and the years for which same were under-assessed, and fixing the value at which same should have been assessed, and the parties, or the Clerks under direction of the Court, may deduct the actual assessment of said property from the amount as found by the court, and the under-assessment so found may be used as the basis for a decree, it being understood that the defendant does not waive any objections to the sufficiency of the pleadings and evidence to support such order and decree.

It is, also agreed that there need be no testimony intro-
[fol. 321] duced as to the rates of taxation for the respective years, but that this can be figured by the respective counsel, or the Clerk of the court, and a final decree submitted to the Court for its approval thereupon.

John M. Rose, Special Counsel for the State. Buzbee, Pugh & Harrison, T. S. B., Attorneys for Defendant.

[File endorsement omitted.]

[fol. 322] IN CHANCERY COURT OF ARKANSAS COUNTY

[Title omitted]

STIPULATION RE ASSESSMENT OF LANDS

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the attached list, certified by the County Clerk of Arkansas county, may be introduced in evidence to show the description and assessment of lands of the Long Bell Lumber Company in Arkansas county for the years 1923 to 1926 inclusive, as shown on the assessment books of said county.

(Signed) John M. Rose, Special Counsel for State.
Buzbee, Pugh & Harrison, Attorneys for Defendant.

[fol. 323] **EXHIBIT TO STIPULATION**

Assessment of Lands of the Long-bell Lumber Company in Arkansas County, Arkansas

Township 5 South, Range 6 West

	Section	Acres	Assessment for Taxation 1923 and 1924	1925 and 1926
Frl. W. ½	3	346.11	$2,760	$3,460
All frl.	4	683.02	5,480	6,830
All frl.	5	671.75	5,400	6,700
All frl.	6	962.73	7,680	9,620
S. W., N. E.	27	40	320	400
W. ½	27	320	2,560	3,200
N. ½	28	320	2,560	3,200
S. E.	28	160	1,280	1,600
N. E., S. W.	28	40	320	320
N. ½	29	320	2,560	3,200
All frl.	7	903.02	7,220	9,030
All frl.	8	640	5,120	6,400
All	9	640	5,120	6,400
All	10	640	5,120	6,400
W. ½ N. W. ¼	14	80	640	800
N. E.	15	160	1,280	1,600
W. ½	15	320	2,560	3,200
N. W., S. E.	15	40	320	400
All	16	640	5,120	6,400
All	17	640	5,120	6,400
Frl.	18	806.81	7,250	8,060
Frl. N. ½	19	449.38	3,600	2,250
All	20	640	5,120	6,400
All	21	640	5,120	6,400
W. ½	22	320	2,560	3,200
W. ½, S. W. ¼	26	80	640	800
S. E., S. E.	27	40	320	400
W. ½, S. E. ¼	27	80	640	800

Township 4 South, Range 6 West

Frl. W. ½	18	340.42	$3,230	$5,480
All	19	870.38	5,600	8,700
All	20	643	5,100	6,400
N. E. ¼	21	160	960	1,600
W. ½	21	320	2,560	3,200
N. W. ¼	28	160	1,280	1,600
S. ½	28	320	2,560	3,200
N. E. ¼, N. E. ¼	28	40	320	400
All	29	640	5,100	6,400
All frl.	30	875.10	7,000	8,750
All frl.	31	875.51	6,960	8,750
[fol. 324] All	32	640	3,840	6,400
All	33	640	3,840	6,400
W. ½	34	320	2,560	3,200

Certificate to foregoing paper omitted in printing.

[fol. 325] In Chancery Court of Arkansas County

[Title omitted]

Stipulation re Lands Involved—Filed Jan. 28, 1927

It is hereby stipulated and agreed by and between counsel for the respective parties herein, that none of the lands involved in this suit are located in any road, or other, improvement district, except approximately 500 acres.

Jan. 24, 1927.

John M. Rose, Special Counsel for State. Buzbee, Pugh & Harrison, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 326] In Chancery Court of Arkansas County

[Title omitted]

Stipulation re Assessment of Lands—Filed Jan. 28, 1927

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the State Tax Commission (now State Railroad Commission) has for each of the years 1917 to 1926, certified to the County Clerks and Assessors in all counties in Arkansas, that it had adopted as a basis of assessment 50% of the actual value of all property in this State for each of said years, and has directed said County Clerks and Assessors to assess all property in their respective counties at 50% of the actual value thereof for taxation.

It is agreed that this stipulation may be read in evidence in this case on behalf of either plaintiff or defendant.

1/25/27.

John M. Rose, Special Counsel. Buzbee, Pugh & Harrison, Solicitors for Defendant, TSB.

[File endorsement omitted.]

[fol. 327] In Chancery Court of Arkansas County

[Title omitted]

Findings

After careful consideration of testimony in this case, together with stipulations, exhibits, etc., and taking into consideration the quality, quantity, accessibility and the percentage of value in comparison with other lands as to values and assessments, and as far as possible determine a legal and equitable assessment of defendant's lands, I conclude that practically all the lands are assessed at from twenty per cent to thirty-three and one-third per cent. of their value. That the legal assessment for all lands should be fifty per cent. of the value,—I conceive it to be my duty to fix a value on defendant's lands regardless of the percentage fixed by the assessors at a uniform rate with other lands based on a percentage of value.

The proof convinces me that the lands in Big Island contain the best timber owned by defendants. Of course, the largeness of the tract, its accessibility for handling timber tram roads or on rivers enters into its value.

The assessment of the Big Island tract should be fixed at $15.00 per acre for the years 1915 and 1918. The other lands in Ark. county, Desha, Monroe and Phillips at $10.00 per acre, prior to the cutting of timber therefrom. For all [fol. 328] other years as set out in complaint the value of each tract should be on a perentage basis as the amount cut bears to the entire values. In other words, the assessment for other years reduced in proportion to the value of timber cut on each tract, on a percentage basis as the reduction bears to the total value of lands on basis as shown by the statement filed in this case.

(SGD.) H. R. Lucas, Chancellor.

May 25, 1927.

[fol. 330] EXHIBIT TO STIPULATION

Lands of White River Lumber Company in Arkansas County, Arkansas

Description	Area	Section	Twp. S.	Range W.	1915 $600
E. of Chute, S. ½ S. ½	258 68	22	4	1	No asmt.
E. of Chute, N. ½ S. ½	115 83	22			160
E. of Chute, Pt. frl. N. W. ¼	74 13	23			200
S. ½ N. W. ¼	80				100
S. W. ¼ N. E. ¼	40				800
S. ½	320				380
S. ½ N. ½	160	24			700
Frl. S. ½	312 77				No asmt.
W. of R., N. ½	5 81				No asmt.
E. of R., W. ¼	3 42				1,600
Frl. All	574 55	25			1,600
S. and E. of Chute, Frl. All	675 15	26			1,000
E. of Chute, Frl. S. ½	410 51	27			No asmt.
E. of Chute, N. ½	320				80
E. of Chute Frl.	21 90	33			360
W. of Chute Frl. N. E. ¼	146 89(116 89)	34			1,000
E. of Chute	383 52				1,800
Both sides of Chute	785 35	35			1,400
Frl. All	583 54	36			30
W. of R. & E. of C.	14 57	1			180
N. of White River Frl.	70 48				1,500
W. of R. & E. of C.	602 19	2			850
E. of Chute & W. of River Pt.	384 61	10			1,400
E. of Chute & W. of River	640	11			180
E. of C., W. of R.	76 31	12			500
E. of C. & W. of R.	221 07	13			400
E. of C. & W. of R.	175 01	14			
W. of Chute, N. E. ¼	160.	22	4	1	360
E. of Chute, S. ½ N. E. ¼	62 58	On Island			160
W. of Chute, N. ½ N. W. ¼	80				200
W. of Chute, S. E. ¼ N. W. ¼	40	500 A tract not in Island			100
W. of Chute, N. E. ¼ S. W. ¼	40				100
W. of Chute, S. E. ¼	85 20				200
S. ½ S. W. ¼	70 03				180

Actual Assessments of Lands of White River Lumber Co., in Arkansas County for the Years 1915–1926

1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
$600	$600	$600	$1,030	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
No asmt.	No asmt.		400	400	420	420	420	420	420	420	420
160	160	160	160	200	200	230	230	320	320	320	320
200	200	200	320	320	320	320	320	320	320	320	320
100	100	100	100	160	160	160	160	160	160	160	160
800	800	800	800	1,280	1,280	1,280	1,280	1,280	1,280	1,280	1,280
380	380	380	380	640	640	640	640	460	460	640	640
700	700	700	700	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
No asmt.		20	State	20	20	20	20	20	20	20	20
No asmt.		10	State	10	10	10	10	10	10	10	State
1,600	1,600	1,600	1,600	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300
1,600	1,600	1,600	1,600	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700
1,000	1,000	1,000	1,000	1,640	1,640	1,640	1,640	1,640	1,640	1,640	1,640
No asmt.		No asmt.		1,280	1,280	1,280	1,280	1,280	1,280	1,280	1,280
80	80	80	80	80	80	80	80	80	80	80	80
360	360	360	360	590	590	590	590	590	590	590	590
1,000	1,000	1,000	1,000	1,530	1,530	1,030	1,030	1,030	1,020	1,020	1,020
1,800	1,800	1,800	1,800	3,140	3,140	3,140	3,140	3,140	3,140	3,140	3,140
1,400	1,400	1,400	1,400	2,330	2,330	2,330	2,330	2,330	2,330	2,330	2,330
30	30	30	30	60	60	60	60	60	60	60	60
180	180	180	180	280	280	280	280	280	280	280	280
1,500	1,500	1,500	1,500	2,400	2,400	2,400	2,400	2,400	2,400	2,400	2,400
850	850	850	850	1,540	1,540	1,540	1,540	1,540	1,540	1,540	1,540
1,400	1,400	1,400	1,400	2,560	2,560	2,560	2,560	2,560	2,560	2,560	2,560
180	180	180	180	300	300	300	300	300	300	300	300
500	500	500	500	880	880	880	880	880	880	880	880
400	400	400	400	700	700	700	700	700	700	700	700
360	360	360	360	640	640	400	400	640	640	640	640
160	160	160	160	240	240	150	150	240	240	240	240
200	200	200	200	220	220	200	200	320	320	320	320
100	100	100	100	160	160	120	120	160	160	160	160
100	100	100	100	160	160	100	100	160	160	160	160
200	200	200	200	200	200	250	250	340	340	340	340
180	180	180	180	280	280	200	200	280	280	280	280

Township 4 South, Range 1 West

Description	Section	Area	1915 Dist.	1915 Mills	1916 Dist.	1916 Mills
E. of Chute S. ½ S. ½	22	258 68	36	5m	36	5m
E. of Chute N. ½ S. ½	22	115 83	36	5m	36	5m
N. of Chute Pt. Frl. N. W. ¼	23	74 13	36	5m	36	5m
S. ½ N. W. ¼	23	80	36	5m	36	5m
S. W. ¼ N. E. ¼	23	40	36	5m	36	5m
S. ½		320	36	5m	36	5m
S. ½ N. ½	24	160	36	5m	36	5m
Frl. S. ½	24	312 77	36	5m	36	5m
W. of R. N. ½		5 81	36	5m	36	5m
E. of R. N. W. ¼		3 42	36	5m	36	5m
Frl. All	25	574 55	37	5m	37	7m
S. & E. of Chute Frl. All	26	675 15	37	5m	37	7m
E. of Chute Frl. S. ½	27	410 51	37	5m	37	7m
E. of Chute (N. ½) S. ½?		320	37	5m	37	7m
E. of Chute Frl.	33	21 90	37	5m	37	7m
W. of Chute Frl. N. E. ¼	34	146 89	37	5m	37	7m
E. of Chute		383 52	37	5m	37	7m
Both sides of Chute	35	785 35	37	5m	37	7m
Frl. All	36	583 54	37	5m	37	7m

Township 5 South, Range 1 West

Description	Section	Area				
W. of R. and E. of C. . . .	1	14 57	37	5m	37	7m
N. of White River Frl.	1	70 48	37	5m	37	7m
W. of R. and E. of C.	2	602 19	37	5m	37	7m
E. of Chute & W. of River Pt.	10	384 51	28	5m	28	7m
E. of Chute & W. of River	11	640	28	5m	28	7m
E. of C. W. of R.	12	76 31	28	5m	28	7m
E. of C. & W. of R.	13	221 07	28	5m	28	7m
E. of C. & W. of R.	14	175 01	28	5m	28	7m

Township 4 South, Range 1 West

Description	Section	Area				
W. of Chute N. E. ¼	22	160	36	5m	36	5m
E. of Chute S. ½ N. E. ¼	22	62 58	36	5m	36	5m
W. of Chute N. ½ N. W. ¼	22	80	36	5m	36	5m
W. of Chute S. E. ¼ N. W. ¼	22	40	36	5m	36	5m
W. of Chute N. E. ¼ S. W. ¼	22	40.	36	5m	36	5m
W. of Chute S. E. ¼	22	85 20	36	5m	36	5m
S. ½ S. W. ¼	22	70 03	36	5m	36	5m

of Taxation of the Lands of the White River Lumber Company for Taxation in Arkansas County for the Years 1915 to 1926

Mills	1917 Dist.	1917 Mills	1918 Dist.	1918 Mills	1919 Dist.	1919 Mills	1920 Dist.	1920 Mills	1921 Dist.	1921 Mills	1922 Dist.	1922 Mills	1923 Dist.	1923 Mills	1924 Dist.	1924 Mills	1925 Dist.	1925 Mills	1926		Name or Number School District
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	35	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m		Not	taxed		36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	Not	taxed	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	Not	taxed	
m	37	7m	37	7m	36	12m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	37	7m	37	7m	37	7m	37	12m	37	10m	37	12m	37	12m	37	12m	37	12m	12	37	
m	28	7m	28	10m	28	8m	28	12m	28	12m	28	12m	28	12m	28	12m	28	12m	12	37	
m	28	7m	28	10m	28	8m	28	12m	28	12m	28	12m	28	12m	28	12m	28	12m	12	37	
m	28	7m	28	10m	28	8m	28	12m	28	12m	28	12m	28	12m	28	12m	28	12m	12	28	
m	28	7m	28	10m	28	8m	28	12m	28	12m	28	12m	28	12m	28	12m	28	12m	12	28	
m	28	7m	28	10m	28	8m	28	12m	28	12m	28	12m	28	12m	28	12m	28	12m	12	28	
m	36	12m	36	12m	59	7½	59	10m	59	10m	59	12m	59	12m	59	12m	59	12m	12	59	
m	36	12m	36	12m	59	7½	59	10m	59	10m	59	12m	59	12m	59	12m	59	12m	12	59	
m	36	12m	36	12m	59	7½	59	10m	59	10m	59	12m	59	12m	59	12m	59	12m	12	59	
m	36	12m	36	12m	59	7½	59	10m	59	10m	59	12m	59	12m	59	12m	59	12m	12	59	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	59	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	
m	36	12m	36	12m	36	12m	36	12m	36	7m	36	12m	36	12m	36	12m	36	12m	12	36	

[fol. 329] In Chancery Court of Arkansas County

[Title omitted]

Stipulation re Assessment Sheets

It is hereby stipulated and agreed by and between the respective parties herein that the attached sheets contain a correct recital of the following facts for the respective years and for the respective tracts of timber lands therein described, to-wit: (1) the amounts at which each tract has been assessed for taxation, (2) the name or number of the school district in which each tract is located, and (3) the rate of taxation for school purposes applicable to each tract for each of the years 1915 to 1926, inclusive.

It is agreed that this stipulation may be read in evidence in this cause.

John M. Rose, Special Counsel for State. Buzbee, Pugh & Harrison, Attorneys for Defendant.

Sept. 1st, 1927.

(Here follows Exhibit to Stipulation, marked side folio pages 330 and 331)

[fol. 332] In Chancery Court of Arkansas County

[Title omitted]

Stipulation re Rates of Taxation—Filed Sept. 16, 1927

It is hereby stipulated and agreed by and between the respective parties herein that the total rates of taxation for State and county purposes, respectively, for the years 1915 to 1926, inclusive, have been as follows (the rates for school purposes be covered in a separate stipulation filed herein) to-wit:

State

1915, 7⅜ mills.	1919, 7 7/10 mills.	1923, 8 7/10 mills.
1916, 7⅜ mills.	1920, 7 7/10 mills.	1924, 8 7/10 mills.
1917, 7½ mills.	1921, 8 7/10 mills.	1925, 8 7/10 mills.
1918, 7½ mills.	1922, 8 7/10 mills.	1926, 8 7/10 mills.

Monroe County

1915, 8 mills; 1616-1919, 8 mills; 1925, 9 mills; 1926, 8 mills.

Desha County

1915 to 1926, 8 mills.

Arkansas County

1915-1924, 8 mills; 1925-1926, 9 mills.

Phillips County

1915-1919, 9 mills; 1920-1926, 8 mills.

It is agreed that this stipulation may be read in evidence in the above styled cause.

John M. Rose, Special Counsel for State. Buzbee, Pugh & Harrison, Attorneys for Defendant.

Sept. 1st, 1927.

[fol. 333] [File endorsement omitted.]

[fol. 334] IN CHANCERY COURT OF ARKANSAS COUNTY, SOUTHERN DISTRICT

STATE OF ARKANSAS, ex Rel. H. W. APPLEGATE, as Attorney General, Plaintiff,

vs.

WHITE RIVER LUMBER COMPANY, Defendant

DECREE

On this day appeared the plaintiff, the State of Arkansas, by its Attorney General, H. W. Applegate, and by its Special Counsel, R. E. L. Johnson and John M. Rose, and appeared the defendant, White River Lumber Company, by its solicitors, Buzbee, Pugh & Harrison, and both parties announcing ready for trial this cause is, by agreement and consent of the respective parties herein and their counsel, submitted to the court in vacation upon plaintiff's complaint with its exhibits, and lis pendens, defendant's answer thereto, including answers to interrogatories attached to plaintiff's complaint, defendant's amended answers to the aforesaid interrogatories, plaintiff's amendment No. 1 to its complaint, defendant's answer thereto, plaintiff's amendment No. 2 to its complaint, defendant's answer thereto, the deposition of C. H. Kirkpatrick, F. E. Stephenson, A. N. Best and two depositions of S. B. Dennison on behalf of plaintiff, the deposition of J. C. Cash, M. F. Montgomery and two depositions of W. W. Keaton on behalf of defendant, upon the following stipulations and agreements between counsel, namely: No. 1 on behalf of defend-[fol. 335] ant reciting certain conveyances of real estate in Arkansas county, with the consideration therefor, as reflected in the deed records in the office of the Circuit Clerk and Recorder of the Southern District of Arkansas county; No. 2 on behalf of plaintiff reciting certain other conveyances of real estate in Arkansas county, with the considerations therefor, as reflected by said deed records; No. 3, stating the number of acres of defendant's lands located in improvement districts; No. 4 showing the basis of assessment adopted and certified by the State Tax Commission; No. 5 providing manner in which decree might be

rendered; No. 6 showing the amount of the assessment per acre of the lands of the Long-Bell Lumber Company for taxation; No. 7 stating the rate of taxation for State and county purposes; No. 8 stating the actual assessment for taxation of each tract of land involved herein, for each year, and also the school district rates of taxation; upon oral argument, and upon briefs of the respective counsel herein, from all of which, after careful consideration, the court finds:

The lands in Arkansas county have been assessed for taxation at various percentages of their actual value, but the average assessment for the period covered by this suit has been approximately 30 per cent of the actual value thereof, and the court adopts said average assessment of land in Arkansas county as the proper basis of assessment of all the lands of defendant herein.

On the aforesaid basis of 30 per cent, the proper assessment of the lands known as the "Big Island group," con-[fol. 336] taining 7,964.10 acres, more or less, is Fifteen Dollars ($15.00) an acre for the years 1915 to 1918, inclusive, and the proper assessment therefor for the years 1919 to 1926, inclusive, is Fifteen Dollars ($15.00) an acre minus 30% of the value of the timber cut therefrom for said respective years; that is, the proper assessment per acre for the year 1919 is $15.00 less 30% of the value of the timber cut per acre in that year; for the year 1920 the proper assessment is $15.00 an acre less 30% of the value of the timber cut in the year 1919 and 1920 per acre, the proper assessment each year being $15.00 an acre less 30% of the value of the timber cut per year for that year and all prior years combined.

The proper assessment of all of the other lands of defendant in Arkansas county, exclusive of the Big Island group, aggregating 13,434.83 acres, more or less, and also the 6,530.36 acres in Phillips county, the 4,965.73 acres in Monroe county, and the 12,449.56 acres in Desha county, is Ten dollars ($10.00) per acre for the years 1915 to 1918, inclusive, and the proper assessment thereof, for the years 1919 to 1926, inclusive, is $10.00 an acre minus 30% of the value of the timber cut therefrom per acre for said respective years in the manner hereinabove provided as to the Big Island group. It is therefore ordered by the court that

said lands be and they are hereby assessed at the aforesaid amounts.

The actual amount and value of timber cut by defendant from the lands is set out in detail in the answers to the interrogatories filed by defendant and identified by the wit- [fol. 337] ness Keaton. The value of the timber cut from all the lands together divided by the total number of acres involved. Using this as a unit, the value of the timber cut from each separate tract will be determined by multiplying said unit by the number of acres in the tract.

If the assessment which has been heretofore placed on said lands for taxation did not equal the courts' assessment as aforesaid, for the respective years, then the actual former assessment will be deducted from the assessment made by the court and the balance is taxable at the rate of taxation applicable to said tract for each year. The taxes on each and every tract, as described, will be figured in like manner.

The court further finds that the attached sheets, numbering 60 in all, correctly state the following facts as to each of the two groups mentioned, to-wit:

1. Separate descriptions of each tract in each of the two groups.
2. Number of Section in which located.
3. Number of acres in the tract.
4. Assessment made by this court before deduction of the value of timber cut in the year 1919-1926.
5. 30% of value of timber cut during the year in question and prior years combined.
6. Assessment by this court after deduction of timber cut. (Item 4 minus 5.)
7. Assessment of the land for taxation prior to this suit.
8. Taxable balance after deducting former assessment from the court's assessment. (Item 6 minus Item 7.)
9. Total tax rate for State, county and School purposes applicable to each tract, separately.
10. Taxes due on each tract. (Item 8 multiplied by Item 9.)
11. Total amount of taxes due on each tract for the period 1915 to 1926, inclusive. (This Item appears on the sheet relating to the year 1926.)

[fol. 338] The aforesaid 60 sheets containing the above figures are embodied in, attached to, and made a part of this decree, being marked Exhibit "A."

And the Court being well and sufficiently advised in the premises, as to both matters of law and fact, it is therefore considered, ordered, adjudged and decreed that the plaintiff, State of Arkansas, for its own use and for the use and benefit of its various political sub-divisions as may be hereinafter shown in this cause, be given a lien on each of the tracts of lands herein involved, together with the timber thereon, a more particular description of which land is given in Exhibit "A" hereto, for the total amount of taxes due for the years mentioned therein, on said respective tracts, but none of said tracts to bear the taxes due on any other tract. The costs herein and the penalty hereinbefore mentioned, if any attaches, shall be apportioned among the various tracts in proportion to the number of acres contained therein. The amount of taxes due on each of said tracts shall bear interest from the date of this decree until paid at the rate of six per cent per annum. The amount of taxes due on each of said tracts, exclusive of interest, costs and penalty, is specifically set out on the last sheet of Exhibit "A" hereto.

It is ordered that the lien in favor of plaintiff herein given, including interest and costs, and penalty, if any, be and the same is hereby declared to be prior and paramount to any right, title, claim, interest or equity of the defendant herein, or any one claiming or holding any right, title, interest or equity therein, either through plaintiff herein [fol. 339] or otherwise.

It is further ordered and decreed that if the aforesaid sums, together with interest thereon and costs herein, be not paid within three months from the date of the rendition of this decree, then defendant shall also pay a penalty of ten per cent of said taxes as provided by Section 10209 of Crawford & Moses' Digest of the Statutes of Arkansas; and the commissioner of this court hereinafter named, after he shall have advertised the time, terms and place of sale for a period of twenty days by publication in newspapers published in each of the counties of Arkansas, Desha, Phillips and Monroe, in the State of Arkansas, and having a bona fide circulation therein, by at least two in-

sertions, shall sell, in separate tracts, for the taxes due on each tract, and the costs herein, apportioned according to acreage, at the — door of the court house at DeWitt all of the aforesaid lands located in Arkansas county; shall sell at the — door of the court house at Helena all of the aforesaid lands located in Phillips county; shall sell at the — door of the court house at Arkansas City all of the aforesaid lands located in Desha county; and shall sell at the — door of the court house at Clarendon all of the aforesaid lands located in Monroe county. Said sales shall be at public auction, to the highest bidder, on a credit of three months. The purchaser or purchasers will be required to execute bond, or bonds, with approved surety, to secure the payment of the purchase money, and a lien shall be retained upon said property as additional security for the payment of such purchase money.

[fol. 340] It is further ordered and decreed that if the plaintiff shall become the purchaser at such sales for a sum equal to or less than this decree, in lieu of giving the bond, as herein required, it may, upon confirmation of such sale, credit the amount of its bid, less the costs to be paid by said defendant and the fee allowed the commissioner for executing this decree, upon said decree, which shall be an extinguishment of the amount herein adjudged to be due, to the extent of such credit; and if plaintiff's said bill shall exceed the amount herein adjudged to be due, with interest, it shall be required to execute bond only for the excess. If the said property, or any part thereof, shall sell for an amount in excess of the judgment, interest and costs herein decreed against the same, then such excess shall be paid over to the defendant herein upon the order of this court.

Upon the sale of said property, as aforesaid, and the confirmation thereof by the court, all of the right, title, interest and equity of redemption of the defendant in and to said property, and every part thereof, shall be and the same are hereby adjudged and decreed from that date to be foreclosed and forever barred.

J. M. Henderson, Jr., is hereby appointed commissioner of this court to execute this decree, and is directed to make the sales in the said counties of Desha, Monroe, Arkansas and Phillips, as herein provided for, and to report his actions hereunder at the next term of this court.

And the court doth retain control of this cause for such further orders as may be proper to enforce the rights of [fol. 341] the parties hereto, as herein adjudged, and the rights of such as may hereafter become parties to this cause by proper proceedings, and also for the purpose of making an order of distribution of the proceeds of this decree. All the costs herein shall be paid by the defendant.

The defendant saves its exceptions to this decree and prays an appeal to the Supreme Court, which is hereby granted.

The plaintiff saves its exceptions to this decree and prays a cross-appeal to the Supreme Court, which is also granted.

Sept. 16th, 1927.

Harvey R. Lucas, Chancellor.

O. K. R. E. L. Johnson.
Form O. K. B. P. H.
O. K. John M. Rose, Special Counsel.
O. K. H. W. Applegate, Atty. Gen.

[fol. 342] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 343 & 344] Bill of costs omitted in printing.

[fol. 345] [Caption omitted]

In Supreme Court of Arkansas

White River Lumber Company, Appellant,

vs.

The State of Arkansas ex Rel. the Attorney General, Appellee

Appeal from Arkansas Chancery Court

Minute Entries—October 17, 1927

Come Cockrill & Armistead, Attorneys of this Court, and pray leave to file a brief herein as amici curiae; and,

being fully advised, the said permission is by the Court granted.

November 7, 1927.

On motion, leave is granted to George Vaughan, a member of the bar of this Court, to prepare and file a brief herein as amicus curiae, and time is allowed him until December 15th, prox., in which to file the same.

[fol. 346]

November 14, 1927.

Come the parties by their solicitors, and by leave of Court file a stipulation pursuant to rule 24 amending the record herein so as to speak the truth.

And now comes the appellant by its solicitors, and shows to the Court that this controversy involves a question of public interest, and moves that the case be advanced, and that the time heretofore allowed George Vaughan to file a brief as amicus curiae be reduced. The Court being fully advised, the prayer of the appellant is sustained, and it is ordered that the order allowing the said Vaughan until December 15th prox. be rescinded, and that the case be advanced and set for November 28th inst,- the said amicus curiae being granted leave to file his brief within two weeks from date.

November 28, 1927.

This cause being regularly called, come the parties hereto by their solicitors, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the Court taken under advisement.

[fol. 347] In Supreme Court of Arkansas

Judgment—January 9, 1928

This cause came on to be heard upon the transcript of the record of the chancery court of Arkansas county, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is error in the proceedings and decree of said chancery court in this cause, in this: The court erred in adjudging recovery of back taxes

against any of the lands involved, except the Big Island group of lands, and erred as to that group in adjudging a recovery at a greater value than $40.00 per acre; but the error may be cured by modifying the said decree.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, as to all the lands involved except the Big Island group, reversed, annulled and set aside with costs, and that as to the Big Island group of said lands, it is further ordered and decreed that the cause be remanded to said chancery court with directions to enter a decree awarding recovery of back taxes on a basis of thirty per cent valuation at the value of forty dollars per acre, making twelve dollars per acre, which sum shall be credited by the amount of taxes already paid.

It is further ordered and decreed that said appellant recover of said appellee all its costs in this Court in this cause expended.

Wood and McHaney, J. J., dissent.

[fol. 348] IN SUPREME COURT OF ARKANSAS

No. 92

WHITE RIVER LUMBER CO.

v.

STATE ex Rel. ATTORNEY GENERAL

OPINION—Jan. 9, 1928

SMITH, J.:

This suit was filed by the State of Arkansas, on the relation of the Attorney General, on July 25th, 1925, against the White River Lumber Company, a foreign corporation, hereinafter referred to as the company, to recover, on behalf of the State and its political subdivisions, certain back taxes alleged to be due by the company. The suit was brought to recover back taxes alleged to be due upon the intangible value of the company's capital stock, but inter-

rogatories propounded to the company developed the fact that it owned no property in this State except its real estate, and about that time the opinion of this court was delivered in the case of State ex rel. Attorney General v. Lion Oil & Refining Co., 171 Ark. 209, in which it was held that the capital stock of a foreign corporation which is neither located nor used within the boundaries of the State could not be assessed for taxation in this State.

An amended complaint was filed, in which it was alleged that the company owned large tracts of timbered lands in the counties of Desha, Phillips, Monroe and Arkansas, which had been grossly under-assessed for purposes of taxation for the years 1915 to 1925, inclusive.

The amended complaint contained a list of the company's lands on which it was alleged that taxes had been paid at under-valuations. This list contains 191 descriptions located in 105 different sections in the four counties named.

It was stipulated that the State Tax Commission had ordered an assessment of all property in the State at 50 [fol. 349] per cent. of the market value, but the court found the fact to be that this direction had not been obeyed by the assessing officers, and that property in the counties mentioned had been assessed at only 30 per cent. of its value. Witnesses who testified on this feature of the case differed widely as to what per cent. of the value had been assessed, some placing it higher and others lower than the 30 per cent. found by the court. Without reviewing this testimony we announce our conclusion to be that the finding of the court below on this question does not appear to be against the preponderance of the evidence.

A large amount of testimony was taken, and we have before us a voluminous record. The testimony on the part of the State was directed principally to a showing of the amount and value of the timber on the lands, which fixed the value thereof.

The testimony on the part of the company was to the effect that all timbered lands in the counties mentioned had been assessed at from 4 to 5 dollars per acre, and that those of the company were of about the same average value as the lands of other owners, and that it would be discrimina-

tory to assess the lands of the company at a higher valuation for purposes of taxation. It was also shown that during the years for which the State asks back assessments large quantities of the timber had been stolen, and that in recent years large quantities had been sold, and that the value of the lands was proportionately reduced.

The court, in fixing the value of the lands, divided them into five groups, those in Desha, Phillips and Monroe counties comprising three of the groups. The fourth group was composed of all the lands in Arkansas County except the lands referred to as "Big Island," which last mentioned body of lands composed the fifth group.

[fol. 350] The court found the value of the Big Island lands for the years 1915 to 1925, inclusive, to be $50 per acre, and the value of all the other groups to be $33.33 for each of these years, and directed that they be back assessed for all those years at 30 per cent of the value stated, less credits for the timber stolen and sold. No attempt was made to show from what tracts of land timber had been sold or stolen, and the court directed that the total amount of these two items be apportioned to the entire acreage, and the valuations were credited with these apportioned amounts. The valuations thus fixed by the court were further reduced by the valuations upon which taxes had been paid.

As a result of this finding and decree taxes were charged against the entire body of land in the sum of $79,033.63, and it was ordered that the lien for the taxes which the court decreed be enforced against each separate tract. From this decree the company has appealed, and the State has cross-appealed, and it is now insisted on behalf of the State that the lien for the taxes should be enforced against the lands as a body or as a personal judgment against the company.

Before further reciting or discussing the testimony, we proceed to consider the legal principles which must be taken into account and be followed in passing upon the issues of fact.

The State is proceeding under the provisions of the Back Tax Law, which appear as sections 10204 et seq. C. & M. Digest. Section 10204 was enacted at the 1913 session of the General Assembly (Acts 1913, page 724) as Act 169, the

title of the act being: "An act to amend section 1 of Act No. 354 of the Acts of 1911, approved May 30, 1911."

[fol. 351] This act of 1913 was passed shortly after the opinion of this court was delivered in the case of State ex rel. Attorney General v. Kansas City & M. Ry. & Bridge Co., 106 Ark. 248, and was, no doubt, intended to remedy certain supposed defects in the then existing Back Tax Law.

In that case the suit was for back taxes alleged to be due upon the bridge owned by the defendant corporation, which the complaint alleged had been assessed for taxation at only about one-sixth of its true value. A demurrer to this complaint was sustained, and the State appealed. Upon the appeal to this court it was held that where a corporation has paid the taxes on the annual assessments made on its property the State could not recover additional taxes where a mere mistake had been made in assessing the property too low, and that a review of the assessments by the courts would be permitted only when the assessing boards or officers had proceeded on the wrong basis of valuation, in omitting some property or element of value or in adopting the wrong basis in estimating value, and it was further held that the policy of the law was to treat the finding of the assessors, supervising boards and commissions as final except when otherwise expressly provided by the statute.

This opinion was delivered January 20th, 1913, and the Act of 1913, which appears as section 10204 C. & M. Digest, was approved March 12th, 1913. By this amendatory act it was provided that "Where the Attorney General is satisfied • • • that in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation [fol. 352] other than the true value in money of any property hereinafter mentioned or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid; that it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the col-

lection of the same, in any county in which the corporation owing such taxes may be found, * * *."

After the passage of the act of 1913, from which we have just quoted, a second suit was brought against the same bridge company to recover the taxes sued for in the first case. It was alleged in the second suit that the corporation owning the bridge had for a number of years paid taxes on the bridge "upon an inadequate and insufficient valuation and upon an undervaluation thereof," and that a large amount of taxes would be due by the corporation upon a proper assessment of its property.

A general demurrer to this complaint was sustained and the complaint was dismissed, from which order and decree an appeal was duly prosecuted to this court. The opinion upon the appeal, which was delivered by L. H. McGill, Esq., as Special Justice, reviewed the Back Tax legislation of the State and interpreted the amendatory act of 1913, and it will now suffice to restate the conclusions there announced without again reviewing this legislation. State, ex rel. v. K. C. & M. Ry. & B. Co., 117 Ark. 606.

[fol. 353] The act was held to be retroactive in its effect and the right of the State to enact such a statute was declared. It was held that the purpose of the statute, as amended by the act of 1913, was to give the State a complete remedy for the recovery of back taxes due by a corporation upon any property in the State which belonged to any corporation at the time such taxes should properly have been assessed and paid, and that a proper exercise of this power was not in violation of the Federal Constitution as denying corporations the equal protection of the law or depriving them of property without due process of law.

It was further held that the fact that no statutory remedy existed for the correction of erroneous assessments at the time they were made did not preclude the Legislature from granting a remedy at a subsequent time, and that the owner of property which, for any reason, escaped payment of a part of its just share of taxation does not have a vested right to immunity from payment of the balance due. It was there also held that the fact that the statute authorized suits for back taxes against corporations only did not cause it to offend against either the State or the Federal Constitution.

After thus announcing the law the decree of the chancery court sustaining the demurrer to the complaint of the State was reversed and the cause remanded for further proceedings in accordance with the opinion, which meant, of course, to hear testimony to determine whether there had been "any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof." That cause was not again appealed to this court.

The case of State ex rel. Attorney General v. Fort Smith [fol. 354] Lumber Co., 131 Ark. 40, was a suit against a domestic corporation to recover taxes on property which the State alleged had escaped adequate assessment for previous years. A second opinion was rendered in the same case, which is found reported in 138 Ark. 581. From this last opinion, which was adverse to the corporation, an appeal was prosecuted to the Supreme Court of the United States, and the opinion of that court on the appeal is reported in 251 U. S. 532.

That was a suit by the State against a domestic corporation to recover back taxes alleged to be due upon a proper valuation of the capital stock of the corporation. The corporation owned stock in two other corporations of the State, each of which had paid full taxes, and it was contended that the corporation sued was entitled to omit the value of such stock from the valuation of its own. The corporation defended upon the ground that individuals are not taxed for such stock or subject to suit for back taxes thereon.

In upholding the right of the State to sue for these back taxes it was stated by Mr. Justice Holmes, speaking for the court, that it was within the power of the State, so far as the Constitution of the United States is concerned, to tax its own corporations in respect of the stock held by them in other domestic corporations, although unincorporated stockholders are exempt from such tax, and that a discrimination between corporations and individuals in regard to such a tax could not be pronounced arbitrary, although the precise ground of policy which led to the distinction did not appear.

It was there further said: "The same is true with regard [fol. 355] to confining the recovery of back taxes to those due from corporations. It is to be presumed, until the con-

trary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the State. See New York State v. Barker, 179 U. S. 279, 283."

Other decisions by the Supreme Court of the United States have upheld the validity of Back Tax statutes passed by the states which apply only to corporations, upon the ground that the State Legislatures, in passing such statutes, may have ascertained, as a practical matter, that if such statutes were made applicable to individuals the expense of enforcement would be so great that the law would be without profit to the State. Winona, etc., Land Co. v. Minnesota, 159 U. S. 526; Weyerhaueser v. Minnesota, 176 U. S. 550; Florida, C. & P. R. R. Co. v. Reynolds, 183 U. S. 471.

We may say, therefore, that the statute under which the State has here proceeded does not violate the Constitution of this State or the Constitution of the United States, and that the State may maintain a suit to recover back taxes under a statute which applies only to corporations, the demand for the additional taxes being predicated upon the proposition that there had been an inadequate or insufficient valuation or assessment of the corporate property.

But while such a suit may be maintained, upon what basis shall such valuation be assessed? The answer to this question is that under section 5 of article 16 of the Constitution of the State the reassessment should be on the same basis as that upon which the original and inadequate assessment was made.

[fol. 356] The section of the Constitution referred to provides that "All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value. • • • "

This constitutional mandate has been many times considered by this court, and several of these cases were reviewed in the case of State ex rel. Nelson v. Meek, 127 Ark. 349. That was a suit on the relation of a judgment cred-

itor of one of the counties of the State, who sought to compel the assessor of the county to assess the property of the county at its full market value in order that funds might be provided to pay the judgment against the county, but in holding against that contention the court quoted from an earlier case as follows: "'In Bank of Jonesboro v. Hampton, 92 Ark. 492, we said: 'It is true the Constitution provides that all property subject to taxation shall be taxed according to its value, but this is done when the valuation is equalized with other property of the same kind in the county.'"

The case of Hays v. Missouri Pacific R. R. Co., 159 Ark. 101, involved the constitutionality of a local act requiring an assessment in certain school districts of all property therein at 75 per cent of its true market value, this being in excess of the per cent. of market value at which other property was assessed for taxation in other parts of the State.

In holding the act unconstitutional it was said: "The object of this provision of the Constitution (the one quoted [fol. 357] above) is to secure equality and uniformity in the imposition of the public burdens. The tax must be laid according to some rule of apportionment which is not arbitrary, but is such that the burden may be made to fall with something like impartiality upon the property sought to be taxed. The settled construction placed upon constitutional provisions similar to the one in question is that uniform taxation requires uniformity not only in the rate of taxation but in the mode of assessment upon the taxable valuation." See, also, Drew County Timber Co. v. Board of Equalization, 124 Ark. 569; Doniphan Lbr. Co. v. Cleburne County, 138 Ark. 449.

This being the rule applicable to original assessments, it must, of necessity, apply to back assessments, for the theory upon which the right to make back assessment is based is that the property sought to be assessed has escaped the payment of its just share of taxes. If our Back Tax statute were construed as conferring any greater right, it would offend against the section of the State Constitution quoted and the equal protection clause of the Federal Constitution. See cases cited above.

It was expressly held, in the case of State ex rel. v. Kansas City & M. Ry. & Bridge Co., supra, that "The statute does not contemplate that any property will be made to bear any greater burden of taxation than it would have borne if it had been originally assessed at its proper value."

We must also take into account the kind of testimony, or the sufficiency thereof, which will justify the courts in holding that property was undervalued by the assessing officers who were clothed by the law with the authority to make the original assessments. Upon this question it was said in the case of State ex rel. v. Kansas City & M. Ry. & [fol. 358] Bridge Co., supra, that "It must be presumed that the courts will give persuasive force to all original assessments fairly made, and will not set them aside on account of mere error in judgment without clear and satisfactory proof. This is demanded by sound policy and the natural justice of the case."

Another principle to be taken into account is that "mere errors of judgment in the assessment of other property do not support a claim of discrimination, entitling the taxpayer to a reduction of his assessment below the actual value of his property (or the uniform basis upon which the assessment is made), but there must be something more—something which in effect amounts to an intentional violation of the essential principal of practical uniformity." Sioux City Bridge Co. v. Dakota County, 260 U. S. 441.

It appears that prior to the passage of act 234 of the Acts of 1917, as amended by act 147 of the Acts of 1919, (An Act entitled "An Act to provide for the assessment and valuation of the taxable property of the State of Arkansas and for other purposes"), the assessments were made by the county assessors, subject to review by the county equalization boards. Subsequent to the passage of the above act the assesments in question were made by the township boards, composed of the county assessor and two reputable and intelligent citizens and taxpayers of each township, subject to appeal to the county court by an aggrieved taxpayer, but not by the State.

The assessors in office during the time the assessments in question were made testified on behalf of the company, and their testimony was to the effect that they had intended to

assess upon a uniform basis, and had made no intentional discriminations for or against any one.

[fol. 359] There was testimony on behalf of the State that all the lands of the company were more valuable than those of other owners whose lands were also assessed at from 4 to 5 dollars per acre.

We think, however, that the testimony, except as to the Big Island group, was too indefinite and uncertain to measure up to the requirement announced in the case of State ex rel. v. Kansas City & M. Ry. & Bridge Co., supra, quoted above. The principal witness for the State—one Dennison—candidly admitted that he had only a very general knowledge of the company's lands except in Arkansas County, and more especially of the Big Island group.

We are of the opinion that the testimony does not show as to any of the lands except the Big Island group "any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof," within the meaning of the rules of law by which that fact is to be determined.

As to the Big Island group, consisting of 7964 acres, the testimony is much more definite and certain. This is shown to be a body of land so unusually well timbered as to have a value not possessed by the other timbered lands which were assessed at from 4 to 5 dollars per acre. The assessing officers were in ignorance of the quality and quantity of timber which gave this land its greater value. As to this group of lands there was an ignorance of the facts. The testimony is conflicting as to its value, but we think it was clearly shown that these lands were of an average value during the entire time covered by the assessments in question of $40 per acre, taking into account the timber stolen and the timber sold.

[fol. 360] As it appears that all other property was assessed at an average of 30 per cent. of its market value, these lands should also be assessed at that per cent. and as 30 per cent. of $40 is $12, that figure represents the valuation at which the Big Island group should be assessed, less, of course, valuation on which the taxes have been paid.

It is earnestly argued on behalf of the State that the valuations for purposes of taxation should be assessed at 50 per cent. of the market value, as this was the basis fixed by the State Tax Commission, and that any assessment based

on a lower per cent. of the market value is an undervaluation within the meaning of the statute under which this suit was brought.

We think, however, that it must appear, from what we have already said, that if the statute is so construed as to permit this to be done, it would offend against both the uniform clause of the Constitution of the State, quoted above, and the equal protection clause of the Federal Constitution.

The argument that any assessment at a less per cent of the market value than that fixed by the State Tax Commission is an underassessment, which may be corrected by a back assessment, is so thoroughly answered by the opinion of the Court of Appeals of the Sixth Circuit in the case of Taylor v. Louisiville & N. R. Co., 88 Fed. 350, that we quote extensively from it. The opinion was delivered by Judge Taft, then a member of that court and now the Chief Justice of the Supreme Court of the United States. The opinion contains an exhaustive review of the decisions of the United State Supreme Court, and is one which has been cited and approved by many courts.

That case is of special value here, as it arose under the [fol. 361] taxing laws of the State of Tennessee and the provision of the Constitution of that state (Article 2, Section 28, Constitution 1870) is so nearly identical with our own on the same subject as to suggest the idea that our provision was taken from the Constitution of that state.

Under the statutes of that state railroads and certain other property were assessed biennially by a board consisting of three members known as the "State Tax Assessor," whose assessment was subject to review by another board called the "Board of Equalization," composed of the Governor, Secretary of State and State Treasurer.

This State board assessed the property of the plaintiff railroad and all other property which it was required to assess at its real value, whereas it was shown that all other property not assessed by the State board of assessors was habitually and intentionally assessed by other assessing officers at not exceeding 75 per cent. of its real or correct value.

The opinion contains a review of many cases and quoted extensively from the opinion of this court in the case of Ex

Par'e Ft. Smith & Van Buren Bridge Co., 62 Ark. 461. We copy that portion of the opinion, as it is directly in point:

"In Ex parte Ft. Smith & Van Buren Bridge Co., 62 Ark. 461, 36 S. W. 1060, the case arose on an appeal from the refusal of the county board of equalization to reduce the taxation of assessment upon the petitioner's bridge. The assessor had assessed one-half of the bridge in Crawford County at $150,000, and the county board of equalization had reduced this assessment to $125,000. At the trial in the circuit court it appeared that $250,000 was a fair [fol. 362] market price for the entire bridge, and that $125,000, therefore, was the full value of one-half of the bridge. It further appeared that all the real estate in Crawford County was assessed at 50 per cent. of its actual value. The appellate court contended that, under the circumstances, the assessment of one-half the bridge should be reduced accordingly to its request of $75,000. The constitution of the state was exactly in the words of the Tennessee constitution, to wit:

"'That all property subject to taxation shall be taxed according to its value, to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state, and provided further that no one species of property, upon which taxes shall be levied, shall be taxed higher than another species of property of equal value.'

"The law passed in pursuance of this section of the constitution required the assessors of the counties in the state to assess the real estate at its true market value in money. The court, in construing this question, said:

"'It may be said that, inasmuch as its property was not assessed above its true value, it had no right to complain. But this is not true. It had the right to demand that no unequal burden be imposed upon it by taxation. The duty to contribute to the support of the state government by the payment of taxes is imposed upon all persons owning property subject to taxation. The constitution provides that this burden shall be apportioned among them according to the value of their property, to be ascertained as directed by law. When, therefore, the property of a few is taxed according to its value, and of all others at one-half its value, then the few are required to contribute double their

[fol. 363] portion of the burden. This is manifestly a wrong, and justice demands that it be redressed whenever it can be done conformably to the laws. * * * In this case the county court acquired jurisdiction, by the appeal of the bridge company, to grant relief from the illegal, erroneous, or unequal assessment of appellant's property, but did not acquire the right or authority to make the valuation of all real property in the county for the purposes of taxation, in all cases in which it had not been done, the true value, by raising it, or to change the valuation of any property except the bridge. The assessment of no property can be increased without notice first given to the owner by the board of equalization. How, then, was the county court to afford relief to appellant? The only relief it could have afforded was to reduce the valuation so as to make it conform to the standard adopted in the valuation of the other real property in the county, or the average valuation of such property. Why should not this relief be granted? The valuation of property is only a constitutional means adopted for the purpose of making the burdens of government bear upon each taxpayer in proportion to the value of his property. The relief suggested accomplishes that end in this case. By granting it, a constitutional right will be enforced, and by denying it, will be withheld, because the means devised for its enforcement were not adopted. By pursuing the latter course, the constitution will be made the means of defeating itself, by the imposition of unequal burdens. To avoid this result, the relief should be granted."

The learned justice also quoted from the case of Cummings v. Bank, 101 U. S. 153, as follows:

[fol. 364] "'But, whatever may be its cause, when it is recognized as the source of manifest injustice to a large class of property, around which the constitution of the state has thrown the protection of uniformity of taxation and equality of burden, the rule must be held void, and the injustice produced under it must be remedied, so far as the judicial power can give remedy.'"

The decision of the court, so far as it is applicable here, is reflected by the 9th syllabus, which reads as follows:

"Under the Tennessee constitution of 1870 (article 2, section 28), declaring that all property shall be taxed 'according to its value,' to be ascertained as the legislature shall direct, 'so that taxes shall be equal and uniform throughout the state,' when it is the uniform practice in the various counties of the state to assess real property at not exceeding 75 per cent of its true value, an assessment upon railroad property at its full value violates the uniformity of taxation which is the main purpose of the constitutional provision, and will be enjoined, although this involves a violation of the letter of the state statute passed pursuant to the constitution, which requires all property to be assessed at its full value."

The petition of the State of Tennessee for a writ of certiorari to review this decision was denied by the Supreme Court of the United States on the authority of Chicago & N. W. Ry. Co. v. Osborne, 146 U. S. 354; Forsyth v. Hammond, 166 U. S. 506. See, 172 U. S. 647.

The basis of assessment which was actually employed in the case of all other property owners must, therefore, be applied here, although it does not conform to the directions of the State Tax Commission. This must be done [fol. 365] to preserve uniformity.

What we have said probably makes it unnecessary to consider whether the State was entitled to a personal judgment against the corporation, to be enforced against its general assets to pay the tax on these lands. That it should be thought necessary to make such a contention argues strongly against the merit of the State's case, for all the taxes assessed against the company's land have been paid and this suit was brought only to collect additional taxes which it is contended should be paid on all the lands. But as the question has been raised and is insisted upon we decide it.

In the case of Worthen v. Quinn, 52 Ark. 82, the syllabus reads as follows: "Where goods are sold by the person in whose name they are assessed for taxation, after the lien of the State for taxes attaches thereto, and his vendee sells them, the collector, if he cannot realize the taxes otherwise, may maintain a suit in equity against the vendee to charge the proceeds of such sale with the payment of the taxes."

That case, however, involved the taxes on personal property—a stock of goods—which, by a sale, had been placed beyond the power of the tax collecting officers to seize and sell.

There is involved here only the taxes on lands, which are always in place and may be sold when the law requires.

In the case of Van De Griff, Sheriff v. Haynie, 28 Ark. 270, it was said: "Unless the power is specifically delegated or expressed, no right of action exists for taxes, and they cannot be turned into judgments. Both the state and municipal corporations have a much better and more expeditious remedy. They have the right by summary proc-[fol. 366] ess, to enforce collection, by levy and sale, and when this power exists, complete and ample as it most assuredly is, it would be monstrous, without plain and express authority to that effect, to say that they could abandon, at pleasure, the usual and simple manner of making collections, and resort to judicial power for their enforcement."

In the case of Coats v. Hill, 41 Ark. 149, it was said: "By our law taxes are glebae ascripti—serfs of the soil—a charge which follows the land in whomsoever hands it may go."

On behalf of the State it is insisted that the right to a personal judgment is given by sections 10209 and 10210 C. & M. Digest. By the first of these sections it is provided that "On such final hearing the court shall render a decree declaring and enforcing said lien for taxes, by sale of the property to which said taxes may have attached. • • • The court shall decree the said taxes shall be paid within three months after rendering said decree, and that in default thereof said defendant shall pay a penalty of ten per centum on the amount of said taxes."

Section 10210 reads as follows: "The sale of any property under said decree shall be made in the same manner as other sales are made under other decrees foreclosing liens in chancery, and with like effect, and the court shall distribute any fund accruing under this act among the State, counties and municipal corporations and school districts entitled thereto by law."

These sections were intended to enable the State to enforce its claim against any corporation owing back taxes, [fol. 367] whose property might be of such a character that the payment could be enforced only by the rendition of a personal judgment; but such is not the case here. The delinquent property is land and land only—and we think there is nothing in the statute quoted from which marks a departure from the policy always pursued in all the State's revenue laws of making the land—and it only—liable for the taxes due on the land. The lands of a corporation might be sold in satisfaction of a decree rendered under the sections quoted from for taxes on other corporate property; but we think these sections mean, as applied to the facts of this case—where the taxes on lands only are involved—that the court is merely authorized to find in the decree the amount of the taxes due and to declare the same to be a lien on the land involved and to order each tract of land sold for the taxes due thereon unless the same are paid within three months of the date of the decree.

The decree of the court below will, therefore, be modified by permitting a recovery of back taxes on the Big Island group of lands only, and on those lands only to the extent herein indicated.

Wood and McHaney, JJ. dissent.

[fol. 368] IN SUPREME COURT OF ARKANSAS

MINUTE ENTRY—January 30, 1928

The petition for rehearing heretofore filed in this cause being called, is now submitted with the response and briefs filed, and is by the Court taken under advisement.

[fols. 369-380] Petition for rehearing, covering twelve pages, filed January 23, 1928, omitted from this print. It was denied and nothing more by order February 13, 1928.

[fol. 381] IN SUPREME COURT OF ARKANSAS

ORDER DENYING REHEARING—February 13, 1928

Being fully advised the petition for rehearing filed in this cause, is by the Court overruled.

[fol. 382] Certificate of W. P. Sadler, Clerk of Supreme Court of Arkansas, to foregoing transcript omitted in printing.

[fol. 383] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Mar. 17, 1928

Now comes the appellant, White River Lumber Company, and files herewith its petition for appeal or writ of error, and says that there are errors in the record and proceedings in the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment of errors:

1. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appellant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

2. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appellant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United

States, which provides that no State shall "deprive any [fol. 384] person of life, liberty or property, without due process of law."

3. The Supreme Court of Arkansas erred in selecting from the lands of defendant 34 separate tracts located in 18 separate Sections, and holding and deciding that said lands so selected should be valued and assessed for taxes for twelve separate years according to the average value of said tracts of land, without requiring each tract of land to be assessed separately according to its value as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

4. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land belonging to appellant, located in 18 separate Sections, should be valued and assessed for taxation for each of the years 1915 to 1926, inclusive, according to the average value of said tracts of land during the entire period of twelve years, without requiring said land to be assessed according to its value for the two years 1915 to 1916, and for each year from 1917 to 1926, inclusive, as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

5. The Supreme Court of Arkansas erred in holding and deciding that the assessments of lands of appellant for each of the years 1915, 1916, 1917, 1918 and 1919, as made [fol. 385] by the duly constituted authorities charged with the making of said assessments, could be set aside and the

assessments for each of said years increased by a system of averages based upon testimony as to the value of said lands subsequent to that time without any testimony as to the value of said lands during each of said years. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall "deprive any person of life, liberty or property, without due process of law."

6. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land, belonging to appellant, could be assessed for each of twelve years, 1915 to 1926, inclusive, on the basis of an average value of all of said tracts of land during all of said years without requiring each of said tracts of land to be assessed according to its value for each of said years as the lands of natural persons in the State of Arkansas are assessed. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

7. The Supreme Court of Arkansas erred in fixing as assessment upon the lands of appellant for the years 1915 to 1926, inclusive, and each of same, higher than the assessments on other lands of like character and value in the taxing district of Arkansas County. The validity of the decision fixing and directing said assessments was denied and drawn in question by the appellant, White River Lum- [fol. 386] ber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. The Supreme Court erred in affirming the action of the trial court in rendering judgment against the appellant, White River Lumber Company.

For which errors the appellant, White River Lumber Company, prays that the judgment of the Supreme Court of the State of Arkansas, dated January 9, 1928, be reversed, and the order of the Supreme Court of the State of Arkansas, dated February 13, 1928, denying the petition for rehearing in said case, be set aside and a judgment rendered in favor of appellant, and for costs.

Buzbee, Pugh & Harrison, by Thos. H. Buzbee, Attorneys for Appellant, White River Lumber Company.

[File endorsement omitted.]

[fol. 387] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR AND ORDER ALLOWING SAME—Filed Mar. 17, 1928

Considering itself aggrieved by the final decision of the Supreme Court of Arkansas in rendering judgment against it in the above entitled case, the appellant hereby prays an appeal or writ of error from said decision and judgment to the Supreme Court of the United States, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

Buzbee, Pugh & Harrison, Attorneys for Appellant, White River Lumber Company.

STATE OF ARKANSAS, ss:

SUPREME COURT

Let the writ of error issue upon the execution of a bond by White River Lumber Company to State of Arkansas, ex rel H. W. Applegate as Attorney General in the sum of

five thousand Dollars ($5,000.00); such bond when approved to act as a supersedeas.

Dated March 16th, 1928.

Jesse C. Hart, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 388] Bond on writ of error for $5,000.00, approved and filed March 17, 1928, omitted in printing.

[fol. 389] In Supreme Court of Arkansas

Writ of Error—Filed March 17, 1928

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between State of Arkansas, ex rel. H. W. Applegate as Attorney General and White River Lumber Company, a corporation, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said White River Lumber Com-

pany, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and [fol. 390] according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand, nine hundred twenty-eight.

Sid B. Redding, Clerk District Court of the United States, Western Division, Eastern District of Arkansas, by W. P. Feild, D. C. (Seal.)

Allowed. Jesse C. Hart, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 391] Certificate of lodgment omitted in printing.

[fol. 392] Citation, in usual form, showing service on R. E. L. Johnson and John M. Rose, filed March 17, 1928, omitted in printing.

[fol. 393] Return to writ of error omitted in printing.

[fol. 394] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION RE ORIGINAL EXHIBIT—Filed May 21, 1928

It is hereby stipulated and agreed that the large map attached to the record herein is an original exhibit and may be considered as such without the necessity of being printed in the record.

Thos. S. Buzbee, Geo. B. Pugh, Counsel for Appellant. R. E. L. Johnson, John M. Rose, Counsel for Appellee.

[fol. 395] [File endorsement omitted.]

[fol. 396] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION TO PRINT ENTIRE RECORD—Filed April 2, 1928

Comes the appellant and states that the points on which it intends to rely in the consideration of the above case are as follows:

1. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appellant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

2. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appellant, White River Lumber Company, on the ground of their being repugnant to that part of

Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty or property, without due process of law."

[fol. 397] 3. The Supreme Court of Arkansas erred in selecting from the lands of defendant 34 separate tracts located in 18 separate Sections, and holding and deciding that said lands so selected should be valued and assessed for taxes for twelve separate years according to the average value of said tracts of land, without requiring each tract of land to be assessed separately according to its value as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

4. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land belonging to appellant, located in 18 separate Sections, should be valued and assessed for taxation for each of the years 1915 to 1926, inclusive, according to the average value of said tracts of land during the entire period of twelve years, without requiring said land to be assessed according to its value for the two years 1915 to 1916, and for each year from 1917 to 1926, inclusive, as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

5. The Supreme Court of Arkansas erred in holding and deciding that the assessments of lands of appellant for each of the years 1915, 1916, 1917, 1918 and 1919, as made by the duly constituted authorities charged with the making

[fol. 398] of said assessments, could be set aside and the assessments for each of said years increased by a system of averages based upon testimony as to the value of said lands subsequent to that time without any testimony as to the value of said lands during each of said years. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall "deprive any person of life, liberty or property, without due process of law."

6. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land, belonging to appellant, could be assessed for each of twelve years, 1915 to 1926, inclusive, on the basis of an average value of all of said tracts of land during all of said years, without requiring each of said tracts of land to be assessed according to its value for each of said years as the lands of natural persons in the State of Arkansas are assessed. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

7. The Supreme Court of Arkansas erred in fixing an assessment upon the lands of appellant for the years 1915 to 1926, inclusive, and each of same, higher than the assessments on other lands of like character and value in the taxing district of Arkansas County. The validity of the decision fixing and directing said assessments was denied and drawn in question by the appellant, White River Lumber Co., on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of [fol. 399] the United States, which provides that no State "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. The Supreme Court erred in affirming the action of the trial court in rendering judgment against the appellant, White River Lumber Company.

That it is necessary for the consideration thereof that the entire record, omitting formal parts, be printed.

Thos. S. Buzbee, Geo. B. Pugh, Attorneys for Appellant.

It is agreed by the parties hereto that the entire record in this case is necessary for the consideration of the points involved.

Thos. S. Buzbee, Geo. B. Pugh, Attorneys for Appellant. R. E. L. Johnson, John M. Rose, Attorneys for Appellee.

[File endorsement omitted.]

Endorsed on cover: File No. 33,323. Arkansas Supreme Court. Term No. 101. White River Lumber Company, plaintiff in error, v. The State of Arkansas ex rel. H. W. Applegate, Attorney General. Filed April 2nd, 1928. (33,323.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1908

WHITE RIVER LUMBER COMPANY, Appellant
v. No. 191.
STATE OF ARKANSAS, on rel. H. W. Applegate as Attorney General, Appellee

APPEAL FROM THE SUPREME COURT OF ARKANSAS

Brief for Appellant

GEO. B. FUGH,
H. T. HARRISON,
A. S. BURKE,
THOS. S. BURKE,
Attorneys for Appellant.

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Appellant contended that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, and the decision of the Supreme Court of Arkansas applying same in this case, were void, because repugnant to that part of Section 1 of the 14th Amendment to the Constitution, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws" nor "deprive any person of life, liberty, or property without due process of law." The Supreme Court of Arkansas sustained the validity of said statute and decision.

STATEMENT

Prior to the year 1917, all assessments for taxation in the State of Arkansas, except assessments of property of public service corporations, were made by County Assessors, subject to review by County Equalization Boards. Subsequent to the passage of Act 234 of 1917, as amended by Act 147 of the Act of 1919, the assessments were made by Township Boards, composed of the County Assessor and two reputable and intelligent citizens and taxpayers of each township, subject to appeal to the county court by an aggrieved taxpayer, but not by the State (opinion Supreme Court of Arkansas R. 248).

The assessments of said Township Boards are, therefore, conclusive against the State as to all property owned by natural persons. By the provisions of Sections 10204, *et seq.*, C. & M. Digest, known as the Back Tax Statute, property of corporations can be re-assessed at any time in the manner provided therein.

Section 10204 reads as follows:

"Where the Attorney General is satisfied from his own investigation or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that, in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of

any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes or any corporation claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant, and the Governor is authorized to employ any attorneys that may be necessary to assist the Attorney General in such suits; provided, that this act shall be construed as retrospective as well as prospective in operation."

Appellant is a corporation organized under the laws of the State of Michigan, authorized to do business in the State of Arkansas, and has for a number of years owned approximately 42,000 acres of overflow timber land lying generally along White River, in the Counties of Monroe, Arkansas, Phillips and Desha, in the State of Arkansas.

These lands were assessed for taxation for all of the years involved herein, by the county and township assessors by the same method that all other lands and all other property in said counties were assessed, and all lawful taxes were paid on said assessments.

On July 25, 1925, appellee filed a complaint in the Chancery Court of Arkansas County, seeking to recover from appellant a large amount of back taxes, alleged to be due upon an intangible value of its capital stock.

Answers to interrogatories attached to the complaint developed the fact that appellant owned no property in the State,

except its real estate and that its capital stock had no intangible value. About the same time, the Supreme Court of Arkansas, in the case of State, *ex rel.* Attorney General v. Lion Oil Refining Co., 171 Ark. 209, held that the capital stock of a foreign corporation which was neither located nor used within the boundaries of the State, could not be assessed for taxation in the State.

Thereupon, on February 11, 1926, appellee filed an amended complaint abandoning the first cause of action sued on, but alleging that the lands of defendant had been grossly underassessed for the purposes of taxation for the years 1915 to 1925, inclusive. The complaint asked for an additional assessment and judgment therein in the sum of $155,850.00 (R. 16). This amendment to complaint did not contain, or have attached thereto, any description of lands.

Issues were made up on this amendment to the complaint, and one or two other amendments, which did not change the issues, except to include the year 1926, and testimony was taken by deposition, the last deposition being taken November 29, 1926.

On January 23, 1927, after all testimony was taken, another amendment to complaint was filed, to which was attached a list of lands (R. 25 to 29). This list contains 191 separate descriptions, or calls, of lands located in 105 different sections and four counties. The list was never submitted to any witness, was never identified as being a list of lands involved in suit, and no mention was ever made in the testimony of any particular tract of land by description, except in one or two instances in an incidental way. The list attached to the amendment divided the lands in Arkansas County into two groups, one group composed of lands referred to as "Big Island" and the other composed of all other lands of appellant in Arkansas County.

Appellant answered (R. 16), setting up, among other defenses, that, during all of the years and in all of the counties set forth in the complaint, its lands had been assessed for taxation on the same basis of valuation as all other property and lands in said counties; that there were large tracts of timber lands

in said counties similar to and of equal value with the lands of defendant, some of which other lands were owned by corporations, but large tracts of which were owned by individuals, which had been assessed on the same basis of valuation as the lands of appellant, or lower; that to enforce Sections 10204, *et seq.* of C. & M. Digest, under which the complaint was brought, in the manner attempted, would result in the lands of appellant being assessed on a greater and higher basis of valuation than other lands of like character and other property belonging to other corporations and individuals were assessed, and that the result of said method of enforcement would be repugnant to the equal protection and due process clauses of the Constitution of the United States.

The rate of assessment for taxation in Arkansas is fixed by the State Tax Commission, and it was stipulated that, for the period involved in this suit, the Tax Commission had ordered an assessment of all property in the State at 50 per cent of the market value (R. 229 and opinion of Supreme Court of Arkansas R. 249).

It was also stipulated (R. 226) that all lands belonging to appellant in the years mentioned in the complaint were assessed in separate tracts as required by statute; that said assessments approximate $4.00 or $5.00 per acre and that the assessments of other timber lands in the counties named for the years mentioned in the complaint were approximately the same amounts per acre.

Appellee, the State, in order to show that the lands of appellant had been underassessed by the assessing officers for the years involved and should be re-assessed by the court on a higher basis, introduced the testimony of two witnesses. Only one of these witnesses undertook to testify as to values of lands at any time. This witness, S. B. Dennison, testified by deposition, taken March 6, 1926 (R. 31), and qualified by stating that he knew what the lands would sell for "in the last, 4, 5 or 6 years," which would not be further back than 1920. He gave it as his opinion that the Big Island lands which had not been cut over were worth $65.00 to $70.00 per acre, and to support that opinion, testified as to three sales of land, one sale being made by Porter to Dennison (the witness) January

31, 1920, of 2,856 acres for a consideration of $25.00 per acre, or a total of $71,402.65 (R. 35 and 36), one sale being made by L. Storthz to Dennison (the witness), December 22, 1922 of 1,700 acres, for a consideration of $30.00 per acre, or a total of $51,000.00 (R. 39), and the third sale by Wylie to Bush, January 15, 1924, of a large body of land situated in several counties, 558.06 acres of which were located in Arkansas County near the lands of appellant, for a consideration of approximately $45.00 per acre, or a total of $25,067.70.

This witness stated that a great deal of land of the defendant had been cut over, some of it had never had any timber on it, and that his values referred only to the lands which had virgin timber and had not been cut over. There was no effort to identify by description or otherwise the lands refered to by witness.

Appellee, also, introduced as a witness C. H. Kirkpatrick (R. 53) who testified that he knew nothing of values, but that he had walked over the lands while hunting and while cruising other lands, and gave his estimates of the average amount of timber which the lands would produce.

Both of these witnesses testified that all of the timber lands in that section were of about the same general character except that the timber on the so-called Big Island group was better than the average, and both testified that a great deal of the land belonging to the defendant had been cut over at different times, some by timber thieves and some by appellant, and that the cut-over lands were practically worthless. The opinion of the Supreme Court finds that "no attempt was made to show from what tracts of land timber had been sold or stolen" (R. 242).

Appellant introduced the testimony of W. W. Keaton, its manager (R. 78), who had formerly been County Surveyor of Arkansas County, and who testified that the approximate area of Arkansas County was 640,000 acres; that about 25 per cent, or 160,000 acres, was timber land; that as a whole, the land of appellant was about the same average kind of land as the other timber lands of the county; that, while several corporations own large tracts of timber lands, that there were

hundreds of individual owners, one individual alone owning 24,000, acres immediately adjoining the lands of appellant, and that the lands as a whole were of about the same general character.

This witness introduced a map, which is on file in this court as an original exhibit, and will show in a graphic manner, the location of the lands of appellant in Arkansas County, and of all other lands referred to in the testimony.

All of the assessors in office in Arkansas County, during the period covered by the complaint, testified at the instance of either the appellant or appellee. All of them testified that they assessed all property in the county, including the lands of appellant, in connection with the township boards authorized by statute. These township boards consisted of two citizens of each township who sat with the assessor in making the assessments for that particular township; that, while they were instructed by the State Tax Commission to assess property at 50 per cent of its market value, they were not able to do so, because, as some of them stated, the township boards would not agree to it; that they did not know at what percentage property was assessed, but estimated the assessments at from 25 per cent to 33 1/3 per cent of actual values, but that, whatever the percentage might be, they endeavored to assess all property of the county on a uniform basis, and did so as far as they knew how; that they did not examine the lands of the defendant, nor any other property which they assessed, but obtained information as to values as best they could and relied to a large extent on the judgment of the township members who had resided in the townships for a long time and were presumably familiar with the property in those townships.

Appellant, also, introduced in evidence certified copies of assessments of Arkansas County, showing the assessments of the lands involved in the sales testified to by witness Dennison. These records show that the land sold by Porter to Dennison January 31, 1920, for $71,402.65, was assessed that year at $11,440.00, or 16 per cent plus of value; that the 1,700 acre tract sold by Storthz to Dennison, December 22, 1922, for $51,000.00 was assessed for taxation at $6,720.00 or 13 per cent plus of value; that the 558.06 acre tract, sold by Wylie to Bush for

$25,667.70, was assessed for taxation in that year at $2,240.00, or 8 per cent plus of value. An examination of the map filed herein, as an exhibit, will show that all of these tracts of land lie immediately adjacent to the so-called Big Island group of the lands of appellant. The tracts of land were sold, bought and owned by individuals, who could not be sued for back taxes.

Appellant, also, introduced a list of 350 transfers for sale of property in Arkansas County, made during the period covered by the complaint, showing total considerations of $3,068,851.64, and that the property covered by said transfer was assessed for taxation during the years involved at $615,106.20, or 20 per cent plus of value. Appellee introduced a list, made along similar lines, showing 240 transfers, with considerations of $534,586.27, with an assessed value of $274,315.20, or 51 per cent plus of value. The lists combined show considerations of $3,410,702.93, assessed at $806,651.40, or 23 per cent plus of value.

The Chancellor of Arkansas County first made a finding (R. p. 230) that "practically all the lands (referring to all lands in the counties) are assessed at from 20 per cent to 33 1/3 per cent of their value." The decree, based on this finding, directed that the lands of appellant be reassessed on a basis of 30 per cent, and, on that basis, that the assessment of the lands on the Big Island tract should be fixed at $15.00 per acre, and on all other lands of appellant at $10.00 per acre subject to certain reductions for timber cut.

On appeal to the Supreme Court, that court sustained the validity of the statute involved, but held that the testimony, except as to the Big Island group, was too indefinite and uncertain to show an underassessment (opinion Supreme Court of Arkansas, R. 249). As to the so-called "Big Island" group, consisting of 7,964 acres, the court held the testimony was more definite and certain, and made the following finding:

> "The testimony is conflicting as to its value, but we think it was clearly shown that these lands were of an average value, during the entire time covered by the assessments in question, of $40.00 per acre, taking into account the timber stolen and the timber sold."

The court, thereupon, ordered that the assessments of said lands be fixed at 30 per cent of that amount, or $12.00 per acre, for the twelve years involved in the complaint and amendments thereto, towit, 1925 to 1926, inclusive, less the valuation on which taxes had been paid.

The so-called Big Island group of lands consists of 34 separate tracts of land located in 18 separate sections (R.27).

The statutes of Arkansas (Sections 9919, 9924 and 10009, C. & M. Digest), providing for the assessment of real property, direct that each tract of land be assessed separately, according to the value of each particular tract.

Act 234 of the Acts of 1917 (now amended by Act 147 of the Acts of 1919, see Appendix) directs that real property shall be assessed each year. Prior to that time, the statutes directed that real property be assessed every two years.

The effect of the back tax statute as construed and enforced by the decision of the Supreme Court of Arkansas, is to discriminate against appellant in the following manner: (a) The lands of appellant were assessed for all of the years in question by the same taxing authorities and by the same manner and method as all other lands and property in the taxing districts involved. Said assessments were conclusive against the State as to the property of all natural persons. The decision of the court ignores the findings of the assessing boards as to the lands belonging to appellant, re-assesses said lands for a period extending back 12 years by methods entirely different from those used by the assessing bodies in assessing the property of natural persons, and by that method has decreed that certain lands of the appellant should be assessed at a rate much higher than other similar lands in the county or taxing districts are assessed, and, in fact, higher than any other timber lands in the county have ever been assessed.

(b) The decision of the court has denied to appellant the right to have its lands assessed according to the value of each separate tract as the lands of natural persons are assessed and has made an assessment based upon the average value of 34 separate tracts, thereby charging some tracts of land of

the appellant with an excessive assessment because of the fact that other lands owned by the appellant are more valuable.

(c) The decision of the court denies to appellant the right to have its lands assessed according to the value of said lands for each year and has decreed that said lands shall be assessed on the basis of an average value for a period of 12 years, thereby charging the lands of appellant with an excessive assessment for some years because said lands may have been more valuable in other years.

(d) The levy of taxes on lands in the so-called Big Island group varies from 20 3/8 mills in 1915 to 29.7 mills in 1926. In 1916 levies on lands in the same group vary from 20 3/8 mills to 22 3/8 mills; in 1917, from 15½ mills to 27½ mills; in 1918, from 15½ mills to 27½ mills; in 1919, from 22.7 mills to 27.7 mills; in 1920, from 25.7 mills to 28.7 mills; in 1921, from 23.7 mills to 28.7 mills (R. 232 and Exhibits p. 230).

It has uniformly been held by the Supreme Court of Arkansas that an illegal charge of any character would avoid a levy of taxes, yet the decision of the court in this case in applying the system of averages for 34 separate tracts of land for 12 years, has necessarily imposed illegal taxes on all lands which were of less value than the average, and this discrimination is not overcome by the fact that other lands might be worth more than the average, because the rates of taxation vary for each year and for each taxing sub-division in which the lands are located.

Appellant thereupon filed a petition for re-hearing, setting up that the decision discriminated against it, or the lands owned by it, in the manner set out and that such discrimination was violative of the clauses of the Federal Constitution above referred to. This petition for rehearing was denied, without opinion (R. 256).

A consideration of the method by which the courts of Arkansas have undertaken to enforce the Back Tax Statute is important in determining the validity of the Act. That method is graphically illustrated by the testimony. We therefore feel justified in submitting as an appendix to this brief a complete abstract of the material parts of the testimony.

SPECIFICATION OF ERRORS

1. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appe'lant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

2. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appellant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty or property, without due process of law."

3. The Supreme Court of Arkansas erred in selecting from the lands of defendant 34 separate tracts located in 18 separate Sections, and holding and deciding that said lands so selected should be valued and assessed for taxes for twelve separate years according to the average value of said tracts of land, without requiring each tract of land to be assessed separately according to its value as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

4. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land belonging to appellant, located in 18 separate Sections, should be valued and assessed for taxation for each of the years 1915 to 1926, inclusive, according to the average value of said tracts of land during

the entire period of twelve years, without requiring said land to be assessed according to its value for the two years 1915 to 1916, and for each year from 1917 to 1926, inclusive, as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

5. The Supreme Court of Arkansas erred in holding and deciding that the assessments of lands of appellant for each of the years 1915, 1916, 1917, 1918 and 1919, as made by the duly constituted authorities charged with the making of said assessments, could be set aside and the assessments for each of said years increased by a system of averages based upon testimony as to the value of said lands subsequent to that time without any testimony as to the value of said lands during each of said years. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty or property without due process of law."

6. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land, belonging to appellant, could be assessed for each of twelve years, 1915 to 1926, inclusive, on the basis of an average value of all of said tracts of land during all of said years without requiring each of said tracts of land to be assessed according to its value for each of said years as the lands of natural persons in the State of Arkansas are assessed. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

7. The Supreme Court of Arkansas erred in fixing an assessment upon the lands of appellant for the years 1915 to 1926, inclusive, and each of same, higher than the assessments on other lands of like character and value in the taxing district of Arkansas County. The validity of the decision fixing and directing said assessments was denied and drawn in question by the appellant, White River Lumber Company on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. The Supreme Court erred in affirming the action of the trial court in rendering judgment against the appellant, White River Lumber Company.

ARGUMENT

THE BACK TAX ACT OF ARKANSAS, IN PROVIDING FOR THE RE-ASSESSMENT OF LANDS OF APPELLANT BY JUDICIAL PROCEEDINGS, AND THE IMPOSITION OF ADDITIONAL TAXES THEREON, LONG AFTER THE PAYMENT OF TAXES AS ASSESSED BY THE DULY CONSTITUTED ASSESSING AUTHORITIES AND NOT PROVIDING FOR SUCH RE-ASSESSMENT OF LANDS BELONGING TO NATURAL PERSONS, DENIES TO APPELLANT AND OTHER CORPORATIONS IN LIKE SITUATION THE EQUAL PROTECTION OF THE LAWS.

The Back Tax Statute of Arkansas involved herein was before this court in the case of Fort Smith Lumber Company v. Arkansas, 251 U. S. 532, but the only question there involved was the right of the State to tax a corporation on the value of its capital stock as represented by the ownership of stock in other corporations. The court, by a five to four opinion, held that it was within the power of the State, so far as the Constitution of the United States is concerned, to tax its own corporations in respect of the stock held by them in other domestic corporations, although unincorporated stockholders

are exempt. No reference was made to the question of discrimination as between corporations and individuals, except to say that "it is to be presumed *until the contrary appears* (italics ours) that there were reasons for more strenous efforts to collect admitted dues from corporations than in other cases." The question of discrimination in the assessment, or method of assessment of property of like character was not involved.

The facts in the case at bar present an entirely different situation from that presented by the above case, and show the "*contrary*" facts necessary to constitute an unlawful discrimination. Here there is no effort to classify property for taxation, nor to tax corporations for the exercise of any corporate powers or the carrying on of any character of business. Neither does this case involve "admitted dues" or taxes on property which has never been assessed.

The case involves the right of the State, at the instigation of the Attorney General, years after lands have been assessed for taxation by the regular assessing authorities and all taxes, or admitted dues, paid thereon, to have a re-assessment of said lands, by judicial proceedings in a court which may or may not be located in the county where such property is situated, not because there was any irregularity in the original assessment, but merely because the owner of the property is a corporation, while property of like character in every respect, owned by natural persons, is not subject to such re-assessment.

Taxes against lands in Arkansas are imposed *in rem*. The taxes are against the lands and not against the owners thereof. (See opinion of the Supreme Court of Arkansas in the present case, R. 253). The lands of appellant, as well as the lands of all other parties, were assessed for taxation for each of the years involved in this suit by the assessing officers, that is, the county assessors and township boards, in the manner required by law. These assessments were made conclusive against the State as to all property owned at the time of the assessments by natural persons. By this action, the State undertakes to reach back twelve years and increase the assessments on the lands of appellant two to three hundred per cent, not

withstanding the fact that appellant's lands had already been assessed as high as any other timber lands in the taxing districts. This is done merely because the appellant is a corporation, and not because of any difference between the lands of appellant and the lands of other parties.

Testimony taken in the case was confined almost exclusively to Arkansas County. That county contains approximately 640,000 acres of land owned and used as the lands of other counties, 125,000 to 150,000 acres thereof being timber lands. There is no claim, and one could not successfully be made, that there is any essential difference between the lands which belonged to appellant and those which belonged to other parties, either natural persons or corporations, the only claim made being that some of the lands of appellant have more timber on them than some of the lands of other parties.

The only witness introduced by the State to testify as to values was S. B. Dennison, a man engaged in buying and selling timber lands and logging timber, the same business in which appellant is engaged, and it appeared from his testimony that he had bought, owned and operated on lands of like character to the lands of appellant, immediately adjacent thereto; that his lands and the lands of appellant had been assessed on exactly the same basis and for practically the same amounts; yet, the State does not and cannot, under the statute, make any attempt to re-assess the lands of Dennison, or collect any additional taxes therefrom.

Appellant owns approximately 21,000 acres of land in Arkansas County. It was shown by the testimony that L. Storthz, an individual, owns approximately 24,000 acres of timber lands immediately adjacent to the Arkansas County lands of appellant. The land was likewise assessed on the same basis as the lands of appellant, but, because Storthz holds title as an individual and not as a corporation, there can be no re-assessment of his lands. It was, also, shown that there were hundreds of other owners of timber lands and that many of these were individuals.

Witness Dennison based his ideas of value on three or four sales of property. The court, by reference to the map of Arkansas County, brought up as an original exhibit, can easily locate the lands involved in these sales, and will find that they are all immediately adjacent to the lands of appellant.

It appeared from the testimony of the State that all of these lands were good timber lands, sold for from $25.00 to $45.00 per acre; that they all belonged to individuals, had all been assessed at four to five dollars per acre, or 8 per cent to 16 per cent of value; that some of them had been logged and produced more timber than it was claimed any of the lands of appellant would produce, and yet, those lands cannot be re-assessed, regardless of what their value is now, or might have been at the time of the assessment.

The witness Kirkpatrick, who testified for the State, stated that he was familiar with the tracts of land known as the Porter, Storthz and Wylie tracts testified to by Dennison. We quote literally from the record as follows (R. 59):

"Q. Are they about the same character as the White River Lumber Company land?

A. I do not think there is but very little difference in them."

Dennison, the State' expert witness, repeatedly stated that the lands were practically the same. We quote verbatim from his testimony (R. 41):

"Q. How does the value of the timber compare with yours?

A. Well, it runs about the same; all in that section of the country, the timber is about the same."

Also (R. 48).

"Q. These lands about which you have testified, and covered by these deeds, introduced as exhibits to your depo-

sitions, are situated, as I understand along contiguous to or near the White River Lumber Company Lands?

A. Yes, sir.

Q. They are all located in the same territory and are practically the same character of lands?

A. Yes, sir, that is a fact."

A reference to lists of conveyances and assessments filed by both appellant and appellee (R. 162 and 203) will show approximately 500 tracts of lands valued at $3,500,000.00. Practically all of these tracts belong to individuals, or natural persons, and many of them have been assessed at 8 per cent to 20 per cent of value, but, because owned by natural persons at the time of assessment, cannot be re-assessed. These lists do not purport to contain all lands even in the taxing district, but illustrate the fact that the great majority of lands in Arkansas are still owned by natural persons and are assessed for taxation on a basis lower than the lands of appellant were assessed. A recapitulation of these lists will be found on last page of appendix.

In view of these facts, we submit that this case is controlled by the principle announced by this court in the recent case of Quaker City Cab Co. v. Commonwealth of Pennsylvania, decided May 28, 1928, 48 Supreme Court Reporter, 553.

That case involved a statute of Pennsylvania, which imposed a gross receipts tax upon corporations operating taxi cabs, but did not impose such a tax upon individuals operating taxicabs. This court, in holding the statute void, said:

> "The equal protection clause extends to foreign corporations within the jurisdiction of the State, and safeguards to them protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. Kentucky v. Paramount Exch., 262 U. S. 544, 550, 43 S. Ct. 636, 67 L. Ed. 1112. The

equal protection clause does not detract from the right of the State justly to exert its taxing power or prevent it from adjusting its legislation to difference in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary, but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation'."

. . . . . .

"In effect Section 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed, while those of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification, to be consistent with the equal protection clause, must be based on a real and substantial difference having reasonable relation to the subject of the legislation. Power Co. v. Saunder, *supra*, 274 U. S. 291. No decision of this court gives support to such a classification. In no view can it be held to have more than an arbitrary basis. As construed and applied by the State court in this case, the section violates the equal protection clause of the Fourteenth Amendment."

The situation in the case at bar is in many respects analogous to the situation described above. Here, the appellant, a corporation, and many natural persons, including Dennison, the witness for the State, his associates Linder Brothers, Bush, Storthz, and others, own timber lands of the same character, located in the same section, so that, in fact, the parties are competitors in business. (This statement does not take into account the many thousands of natural persons who own property in the State.) Dennison goes to the Tax Collector's office, once each year, pays taxes on his property at the amount charged against it by the assessing officers, and obtains a re-

ceipt in full of all present and future liability for taxes. He can then balance his accounts, pay his income tax, settle with his creditors, and use the balance of his profits for any purpose desired. Appellant goes through the same procedure, year after year, but the payment of taxes by appellant means nothing. It is conclusive upon the appellant to the extent that it cannot possibly obtain the return of any part of taxes paid even if its lands are overassessed, but it is not conclusive upon the State, and appellant cannot possibly know when its liabilities as a taxpayer are discharged because it is liable at any time, even many years afterwards (in the present case, more than ten years, and it might be an indefinite period, because the statute of limitations does not run against the State), to be met with a demand by the State to have its property re-assessed by a different method and according to different rules and pay an enormous sum by way of so-called back taxes.

Why is the appellant subjected to this discrimination? Not because of any difference in the character of property which it owns, because the character of the property is not made a test; not because of the character of business in which it is engaged, because the character of business is not made a test, but, solely because it is a corporation.

It will no doubt be argued that appellant should have avoided this difficulty by paying the proper amount of taxes in the first place, but, what more could appellant have done? It paid promptly the full amounts charged against it on the tax books. It could have paid no more, because the collector had no authority to receive any more. If it had asked the taxing authorities to increase its assessments and that had been done, that would not have estopped the State, because the taxing authorities had no authority to bind the State in the assessment of property belonging to corporations, and some future Attorney General might have found a witness, like the witness for the State in this case, to testify to an even higher value.

It will, also, probably be argued that the appellant is not now required to pay taxes on any higher basis than other

parties. We submit that the facts in this case show that this is not true, but we might ask how can any one know whether it is true or not. There has been no judicial investigation into the values of other property. Such an investigation might bring forth witnesses who would testify that many pieces of property were underassessed. The assessors, in considering the property of the county as a whole had already determined twelve times, for twelve years, that the property of appellant was assessed on a basis uniform with that of other property. No one knows what a judicial investigation, covering other specific pieces of property for specific years might develop.

All of the taxpayers who were in office during the 12 year period covered by the re-assessment, testified that they assessed the property of appellant on a basis uniform with that of other property as far as they were able to do so. The efforts to reach uniformity are well illustrated by the testimony of J. C. Cash, who was Assessor of Arkansas County from 1919 to 1923. We quote verbatim from his testimony as follows (R. 101):

"A. That is just as I said in the beginning, you know, that those valuations were established by these members of these boards over the county, that they made all assessments as I understood it. Well, then, in—I am not positive whether it was 19—I think it was 1921, there was one township in this county that raised lots of these timber lands to ten dollars an acre—well, that was the Arkansas Lumber Company, and Mr. Gibson and Mr. Burnett were representatives of that company here and they made a protest. Well, you see, these—the assessors are supposed to call the county board to meet here on about the twentieth of August, and I recall that they came in with their protest and there was a motion made before this board to appoint a man—they claimed—several claimed that these assessments were not right—and that they appoint a man to go over these books and equalize all these assessments. And they appointed Mr. E. J. Spratlin and he changed a good deal of our assessments that year, but how much, I don't know.

"Q. That was done under the supervision of the board?

A. Yes, sir.

Q. And that was an effort to make the assessments uniform?

A. Uniform, yes, sir, all over the county, in these timber lands. And he was supposed—he had been in the real estate business here for many years and he was supposed to know more about the values of these timber lands than any other man, and he was appointed and did go over and tried to equalize all these assessments.

Q. Your township boards were composed of men who lived in the township and were familiar with the lands?

A. Familiar with the lands, supposed to be, yes, sir. There were two men; generally the Justices of Peace of the township were appointed on my board, but they were not always. Sometimes when one that was appointed didn't come, then I appointed a man, myself and swore him in in their stead, a man who lived in the township and supposed to be familiar with it (R. 103).

Q. Now, Mr. Cash, you stated the boards—township boards assessed these lands?

A. Yes, sir.

Q. Did they assess all the lands of the White River Lumber Company?

A. In their respective townships" (106).

All of the other assessors testified to the same effect.

Now, because the appellant is a corporation, and the Attorney General of the State, years after the assessment, has found one witness, an adjoining landowner and competitor of appellant, who will testify that certain lands of appellant were worth more than might be indicated by the assessment, the appellant is subjected to a large judgment for increased

taxes not only for the period during which this witness undertook to testify as to values, but for a period five years prior thereto as to which time there is not a syllable of testimony in the record anywhere as to values.

We submit that no more glaring case of discrimination, by way of taxation as between corporations and natural persons, can be shown. So far as we have been able to find, until the decision of the Supreme Court of Arkansas, now under review, there has never been a decision of an appellate court sustaining a statute authorizing such a discrimination.

The decisions of the Supreme Court of Arkansas, on this question have never been unanimous. Two of the justices dissented from the present decision, because of reasons stated by Mr. Justice Wood in a concurring opinion in State v. Bodcaw Lumber Company, 128 Ark. 505. (See note of dissent, 175 Ark., p. 974). That case involved the collection of back taxes from a corporation, based on an assessment of value of the capital stock of a corporation represented by property owned in another State. It involved none of the questions now under consideration, except that of the constitutionality of the back tax statute. Mr. Justice Smith, who rendered the opinion in the present case and Mr. Justice Hart, now Chief Justice, dissented from the opinion in that case. Mr. Justice Wood, who dissented from the present opinion, concurred because of a former opinion of the court, but in so doing, vigorously attacked the constitutionality of the statute, and, in his opinion, analyzed the decisions of this court which were cited in the present opinion by Mr. Justice Smith in upholding the constitutionality of the Act. That part of the dissenting opinion of Mr. Justice Wood, discussing the constitutionality of the Act, is as follows (R. 522):

> "However, in view of the far reaching consequences that it may have, I have concluded, while my mind is on the statute, to record here my views as to the constitutionality of the Act, which I frankly concede it would have been more appropriate to record in the case of State, ex rel. v. K. C. & M. Ry. & B. Co., *supra*, but which at

that time I was unable to reduce to writing by pressure of other urgent court duties.

"I am firmly of the opinion that the Act under which this suit was brought is unconstitutional, because the Legislature, by striking out the words 'or person' from the original Back Tax Act of 1887, and leaving the Act to apply only to corporations, showed its deliberate purpose to discriminate against corporations and to favor natural persons. While it is well settled that the soverign power may classify for taxation, it is equally well settled that such classification must have some basis in reason to justify a discrimination or distinction between taxpayers. The cases which recognize the right of the soverign to classify, in stating the rule, also recognize the principle that if the classification be clearly unreasonable and arbitrary, and without any just distinction to rest upon, such classification comes within the inhibition of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Williams v. State, 85 Ark. 464; St. L. I. M. & S. Ry. Co. v. State, 86 Ark. 518; Mo. & N. Ark. Rd. Co. v. State, 92 Ark. 1; Ex parte Byles, 93 Ark. 613; Ozan Lumber Co. v. Union County Bank, 207 U. S. 251.

"I contend that any law which shows on its face no other reason for classification than that one taxpayer is a corporation and the other an individual is based upon considerations that have no possible connection with the duties of citizens as taxpayers. Such a statute is purely arbitrary, capricious and oppressive, and is in plain violation of article 16, section 5 of our Constitution, requiring all taxes to be equal and uniform throughout the State. And by violating this provision it also violates the Fourteenth Amendment to the Constitution of the United States, which prohibits the State from denying to any person the equal protection of the laws. 1 Cooley on Tax, 72 et seq., 83; Judson on Tax. pp. 594, 606, 608, 618.

"Such I understand to be the law as announced not only by the ablest authors of text books on the subject of

taxation, but also by the State courts of last resort, and by the Supreme Court of the United States, where the question has arisen in the latter court, under State Constitutions having an equality and uniformity clause similar to ours. State v. Loomis, 115 Mass. 307, 314; Russell v. Croy, 164 Mo. 69; South & North Alabama Railroad v. Morris, 65 Ala. 193, 199; Santa Clara Co. v. So. Pac., 18 Fed. R. 385; North Pac. Ry. Co. v. Walker, 47 Fed. R. 681; County of San Mateo v. So. Pac. Ry. Co., 13 Fed. 145, 150; Gulf, C. & S. Ry. Co. v. Ellis, 165 U. S. 155; Bell's Gap Rd. Co. v. Pennsylvania, 134 U. S. 232, 237; Connolly, v. Union Sewer Pipe Co., 184 U. S. 540, 560; Bradley v. Richmond, 227 U. S. 477.

"In Fletcher v. Oliver, 25 Ark. 289, 295, we said: 'Taxation by uniform rule means by one and the same unvarying standard; uniformity not only in the rate of taxation, but uniformity in the mode of assessment by which the value is ascertained. There must be an equality of burden.' In Ex parte Fort Smith & Van Buren Bridge Co., 62 Ark. 461, we said: 'When the property of a few is taxed according to its value and of all others at one-half its value, then the few are required to contribute double their proportion of the burden. This is manifestly wrong, and justice demands that it be reassessed whenever it can be done in conformity to the laws.'

"Legislation for the collection of 'back taxes' which seeks to lay the burden of paying those taxes upon only one class of taxpayers, while exempting all others, without any reason for such discrimination other than that the one class consists of corporations while the other is natural persons, is equally as obnoxious to the equality clause of our Constitution as would be legislation making the same classification for the original assessment of taxes. The effect of such legislation in either case is to lay the burden necessary to meet the expense of the government upon one class of property owners, while exempting others, based upon no other reason than a mere difference in ownership and in names of owners. Such legislation, in its last analysis, is but a flagrant discrimination

against individuals who may have associated themselves according to law and for lawful purposes in order to transact their business in a common name by which the corporation is designated, and in favor of individuals who may transact precisely the same kind of business as natural persons without a corporate name. To illustrate, the Sunnyside Planting Company is a corporation engaged in the business of producing cotton in Chicot Co. Arkansas. It owns two thousand acres of land in that county which is used for that purpose. Suppose it has failed to pay taxes on such lands for fifty years. John Jones has also two thousand acres adjoining the lands of the corporation, precisely the same character of land and used for the same purpose. He too, has failed to pay the taxes on his land for fifty years. Or say each of these taxpayers has had on hand each year during all these years one hundred mules, ten thousand in money or other of the same kind of personality which they have failed to return for taxation. Can any reason be suggested why a law should be enacted compelling the corporation to pay these back taxes and expressly exempting John Jones from liability therefor? Yet such is the effect of the statute under review. See Wolff Chem. Co. v. City of Philadelphia, 66 Atl. 344, 217 Pa. 215; United States v. Milwaukee Refrig. Tr. Co., 142 Fed. 247.

"The mandate of our Constitution requiring taxes to be equal and uniform forbids legislation that makes 'fish of one and flesh of another' taxpayer who both stand in precisely the same relation to the government as to their taxpaying duties. The act makes no attempt to classify as to any particular corporation or special kind of property that might furnish fit subjects for classification. It is but a bald discrimination between corporations in general and natural persons. Of course, when the sovereign power is fair and just, making no arbitrary and oppressive discrimination in the law itself by which it seeks to compel delinquent taxpayers to bear their proportion of the burdens of taxation, then, if by reason of defective administration of the law one delinquent is caught while another escapes, 'it does not lie in the mouth of the one

called upon to make his contribution to complain that some other person has not been coerced into a like contribution.'

"In the recent case of State, ex rel. v. K. C. & M. Ry. & B. Co., 117 Ark. 606, this court to sustain its view that the act was valid, cited and relied principally upon Weyerhaueser v. Minnesota, 176 U. S. 550, and Florida Cent., etc., Rd. Co. v. Reynolds, 183 U. S. 471.

(These are the cases relied upon by Mr. Justice Smith in the opinion now under review).

"In the Minnesota case the legislation arose under a statute which operated alike upon all taxpayers. There was no classification, hence no discrimination on the part of the sovereign by which one class of delinquents, to-wit, corporations, could be made to pay while another class of delinquents, to-wit, individuals, who stood in precisely the same attitude as to the duty to pay taxes, was exempt.

"The Florida case arose under a statute which provided for the collection of taxes 'upon any railroads and the properties thereof for the years 1879, 1880, 1881'. Here was a classification which all the authorities recognize as perfectly legitimate and reasonable for taxation purposes.

"As is well expressed by Judge Caldwell, speaking for the court, in Northern Pac. R. Co. v. Walker, 47 Fed. R. 681, 'The franchise of railroad companies, and their earnings, and railroad property, may well be classed by themselves for the purposes of taxation and taxed by a different method or rule from that applied to other property.' Of course, all that is said in the opinion in the above cases must be interpreted in the light of the facts upon which the opinion is based. The Constitution of Florida is unlike ours in that it provides only 'for a uniform rate of taxation.' Not only was it reasonable that railroads should stand in a class by themselves, but the act specially mentions the years that such railroad had

escaped taxation. On this feature of the act the court said: 'A wrong intent cannot be imputed to the Legislature. It may have found that the railroad delinquent tax was large' (for three years) 'and the delinquent tax on other property was small and not worth the trouble of provision therefor'. But it could hardly be said of the act under review that in 1913, when the Legislature made the act apply solely to corporations by striking out persons it did so for the reason that it found that corporations, during all the years they had been allowed to do business in this State, had been delinquent in the payment of taxes while individuals had not. The very fact that the Legislature, for all this long period, made a discrimination against corporations shows a deliberate purpose to cast upon them an unequal burden of taxation. Speaking of the effect of the Fourteenth Amendment on such a state of facts, the court further said: 'Doubtless it would prohibit a State from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others where property was similarly situated, but it does not prevent a State from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way.'

"Therefore, I am unable to see how the Minnesota case and the Florida case, *supra*, have any application or give any support to the view that the 'Back Tax' Act of 1887, as amended, is a valid enactment. As I stated in the beginning, the act shows on its face that it is in plain violation of the 'equal and uniform' clause of our Constitution, and, being so, it is also in plain violation of the 'equal protection' clause of the Fourteenth Amendment to the Constitution of the United States."

We do not overlook the fact that three of the Honorable Justices of this court dissented from the majority opinion in the Quaker City Cab Company case, but we confidently submit that the reasons set out for the dissenting opinions do not apply in this case. Here, there is no attempt to tax the busi-

ness done by a corporation, nor to classify property for taxation. The statute applies to all classes of property, whether lands, cattle, merchandise, stock, bonds, or any property subject to taxation and makes the sole test of its application that of ownership of the property.

To illustrate: A corporation operating a dairy is subject to have a re-assessment of its cows, possibly years after the cows are dead. Its competitor, across the road, operated by an individual, or a partnership, is exempt from such liability. A corporation having a merchantile business is subject to a re-assessment of its stock of merchandise and to have its assessment increased on the sole opinion of a competitor, at any time during its existence as a corporation. Its competitor, in an adjoining building, operated and owned by an individual or partnership, is exempt from such liability. A corporation operating a farm is subject to have a re-assessment made not only of its lands, but of its farm implements, live stock and poultry at any time during its corporate existence the Attorney General may elect. Its competitor, an individual or partnership, operating an adjoining farm of equal size and under similar conditions, is subject to no such liability.

Many illustrations of like discrimination could be submitted, yet hardly any would be more glaring than the one shown by the case at bar wherein it appears that the appellant owns 21,000 acres of land in Arkansas County and an individual, L. Storthz, owns 24,000 acres of like character immediately adjoining the lands of appellant; yet the State selects approximately 7,000 acres of the lands of appellant, increases the taxes thereon approximately two hundred per cent for a period of twelve years, while the original assessments of the lands of Storthz are absolutely final and conclusive, and there is no method provided by which such assessments can be attacked or set aside, regardless of how inadequate they may have been.

The highest price ever paid for land, exclusively on Big Island, according to the testimony in this case, was $25.00 per acre. This was paid by Dennison in October, 1924, in a purchase from J. A. Price (R. 47).

Dennison, also, bought 2,856 acres from Porter in January, 1920, for $25.00 an acre. According to Dennison's testimony, he cut 7,000 feet per acre off the Porter land and made $100,000.00 on it (R. 36-37). He cut over 8,000 feet to the acre from the 117 acres on Big Island (R. 32). The highest estimate he made of timber on the appellant's Big Island land was 5,500 feet per acre (R. 33).

The estimate of witness Kirkpatrick was 5,500 to 6,500 feet per acre (R. 53).

Yet, notwithstanding the fact that the Porter and Price lands referred to cut approximately 33 1/3 per cent more timber than that estimated to be on appellant's lands, the court has fixed the value of appellant's lands 60 per cent higher than the sales price of those lands and has made that value retroactive nine years prior to the date of sale of the Price land.

The highest price ever paid for any timber land, in Arkansas County exclusively, so far as the testimony in this case shows, was $30.00 per acre. This was the sale of Storthz to Dennison, in December, 1922 (R. 63). In making this statement, we do not overlook the fact that in the sale of Wylie to Bush, there was a consideration shown of $45.00 per acre, but only about 1-10 of the land involved was located in Arkansas County, and less than 1-10 of 1 per cent was located on Big Island. Yet the court has established a value of $40.00 per acre or $10.00 per acre higher than the highest sales price of any other land in the county, and $15.00 per acre more than the highest sales price of any land on Big Island, and directed that appellant's lands be re-assessed at $12.00 per acre for twelve years past, while the assessments of all of the above lands are left at four and five dollars per acre and these assessments cannot be changed.

With a statute under consideration which permits discriminations of this character the language of this court in the case of Gulf, Colorado & Santa Fe Ry. Co. v. Ellis, 165 U. S. 150, is especially appropriate. The court, by Mr. Justice

Brewer, in the course of a thorough discussion of the principles involved said (pp. 154 and 155):

> "It is well settled that corporations are persons within the provisions of the Fourteenth Amendment of the Constitution of the United States. (Citing authorities.) The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the law than it has to individual citizens.
>
> "But it is said that it is not within the scope of the Fourteenth Amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true (citing authorities); yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subject to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subject, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

There is nothing in the present statute to justify a distinction between corporations and natural persons any more than a distinction between "white men and black men," or between men "possessed of a certain wealth" and others.

We, therefore, submit, in the language of Mr. Justice Wood of the Supreme Court of Arkansas, above quoted, that

the statute is "purely arbitrary, capricious and oppressive," and in plain violation of the equal protection clause of the Federal Constitution.

THE DECISION OF THE SUPREME COURT OF ARKANSAS, MADE UNDER THE BACK TAX ACT, BY SELECTING THIRTY-FOUR TRACTS OF LAND FROM ONE HUNDRED NINETY-ONE TRACTS OWNED BY APPELLANT, AND RE-ASSESSING THE SAME ON THE BASIS OF AN ALLEGED AVERAGE VALUE OF SAID THIRTY-FOUR TRACTS FOR TWELVE YEARS, ON AN AVERAGE BASIS OF ASSESSMENT, WHILE THE LANDS OF NATURAL PERSONS ARE ASSESSED ACCORDING TO THE ACTUAL VALUE OF EACH SEPARATE TRACT FOR EACH SEPARATE YEAR ON THE ACTUAL BASIS OF ASSESSMENT FOR THAT YEAR, DENIES TO APPELLANT AND OTHER CORPORATIONS IN LIKE SITUATION THE EQUAL PROTECTION OF THE LAWS.

We have undertaken to show that the Arkansas statute is void because of its terms. If, however, the court should find that there are any circumstances, such as those under consideration in the case of Fort Smith Lumber Company v. Arkansas, 251 U. S. 532, under which the Act might be valid, or rather, which involve the exercise by the State of a legitimate power, so that the court might not feel it necessary to hold the statute invalid, we still submit that as administered in this case by the decision of the Supreme Court of Arkansas, the Act is void, like in the case of Cummings v. National Bank, 101 U. S. 153, where the court held that a just interpretation of a statute of Ohio might be consistent with the Constitution, but that it might be so administered as to make it unconstitutional, saying (p. 161):

"The evidence we are compelled to say, shows this to be true of the case before us."

The case, also, laid down the following general rule (pp. 157 and 158):

"Independently of this statute, however, we are of the opinion that when a rule or *system of valuation* (italics ours) is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

In the case of St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350, the court said (p. 362):

"But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the State court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State."

Applying these principles to the present case, we find the following situation:

Section 9919, C. & M. Digest, provides that "*each separate parcel* of real property shall be valued at its true market value in money."

Section 10889, C. & M. Digest, requires "*each separate tract* of real property in each congressional township" to be assessed separately.

The manner in which these assessments are to be made is set out in Section 9924, C. & M. Digest, which directs the assessor, in listing property for taxation, to list "the description of each tract by sections, or the largest subdivision of which the same is capable," and requires him to swear that he has assessed "each tract" at its true value in money. These provisions have heretofore been strictly enforced by the Arkansas Courts.

In the case of Bauxite Company v. Board of Equalization of Saline County, 119 Ark. 362, the court held that the unit rule of valuation could not be applied to the assessment of land and that "each separate parcel of real property" should be assessed separately.

In the case of Bonner v. Board of Directors of St. Francis Levee District, 77 Ark. 519, the south-half of Sections 34 and 35 had been assessed as one tract. Taxes were paid on the south half of the south half of said sections, but were not paid on the north-half of the south-half thereof. The north-half was returned delinquent and sold. In passing on the sale, the court said (p. 521):

> "The statutes of this State provide that real property, belonging to the same owner, shall be assessed by section, or the largest subdivision of which the same is capable; and that 'in all cases, when practicable, and the land is owned by one person, or one or more persons jointly, description of lands, both on the tax books and delinquent lists, shall be in tracts not less than one hundred and sixty acres,' and that lands shall be described on the delinquent lists as they are described on the tax books; and impliedly that they shall be sold at tax sale in the same manner. Kirby's Digest, Sections 6976, 7024, 7083 and 7085. The effect of these statutes is to prohibit the collector or other person changing the assessment of lands after the tax books have been delivered to the proper officer. The assessor only is authorized to make the assessment.
>
> "The south halves of sections thirty-four and thirty-five were each assessed as a whole. The value of no particular part was fixed, and from the assessment it could not be ascertained. One part may be worth more than another. For the purposes of taxation they could not be subdivided except by re-assessment. The offer of the north half of the south half of the sections, as separate tracts, for sale, was without authority, and the sale was void."

In the case of King v. Booth, 94 Ark. 306, the court approved the above case, and held (p. 310):

> "In the case at bar an undivided 2-6 part of the land, containing 53 acres, was assessed and sold separately from the other portions of the tract. The part so assessed and sold was attempted to be segregated, and the number of acres contained in it was given, but there is no earmark furnished by which to distinguish it from the other parts of the tract. From the description given its location with reference to the other parts of the tract is not shown; its value as compared with the other parts cannot be ascertained, and we think the description falls within the rule heretofore laid down by this court that where a part of a tract of land is assessed and sold for the non-payment of taxes, and the description is not sufficiently definite to locate it with reference to the remaining portions of the tract, the sale will be void. See Bonner v. Board Directors of St. Francis Levee Dist., *supra;* Beardsley v. Hill, *supra,* and cases cited; Beardsley v. Hill, 71 Ark. 211; Buckner v. Sugg, 79 Ark. 442."

By Section 11, Act 147 of 1919, property owners (but not the State) are given the right to appeal, and when each tract of land is assessed separately, as required by statute, the owner may appeal from the assessment of any particular tract without appealing from the assessment of all.

The statutes further provide, that the values must be determined at definite and stated periods. Section 9924, C. & M. Digest, provides that this period shall be on or before the second Monday in September in the year 1887, and every second year thereafter, which, as applied to this case, means that the values for 1915 and 1916 must have been fixed, as they undoubtedly were, by the assessors on or before the second Monday in September, 1915. By Act 234 of 1917, approved March 12, 1917, effective immediately (see Act as amended by Act 147 of 1919, Appendix), it is provided that the assessment shall be made each year "according to its value on the first day of May" and taxpayers are given the right of appeal from assessments made in each year.

Taxes are levied in each year by the various taxing districts (in the present case, counties and school districts) on the basis of assessments made for that year. Section 9870, C. & M. Digest, authorizes any person having real or personal property assessed for taxation, to appear before the county court at the time of the levy of taxes by it, or at the succeeding term thereafter, and object to the levy of any specific taxes for illegality.

It follows, therefore, that property owners (except corporations under this statute) can only be required to pay taxes on lands according to the value of each particular tract fixed for the particular year for which taxes are levied.

The Chancellor of Arkansas County clearly recognized this principle in the decree which he rendered, by charging a definite amount of taxes against each particular description of land in each year involved, and providing that a lien be given on each tract of land "for the total amount of taxes due for the years mentioned therein on said respective tracts, *but none of said tracts to bear the taxes due on any other tract;*" but, while this principle is recognized in the mathematical calculations carried forward into the decree it was ignored entirely in the testimony and the finding on which the re-assessments were made and entirely ignored by the decision of the Supreme Court.

The lands of appellant involved in this suit were assessed for taxation in 191 separate tracts, located in 105 different sections in four counties. The lands of the so-called Big Island group involved in this appeal, were assessed in 34 separate tracts (R. Exhibit p. 230). No witness was introduced who pretended to have any knowledge of values prior to 1920. No witness was asked or pretended to testify about the value of any particular tract of land at any particular time. The only estimate of value given by the witness, Dennison, the only witness on that point, was the value at some time not named (but subsequent to 1920) of such of the lands as had not been cut over and still had good timber on them. The Supreme Court of Arkansas has failed to call attention to any testimony from which the court could have found the value of any

specific tract of land in any year, and we challenge counsel for the State to point out any such testimony.

The court found from the testimony that, during the period covered by this suit "large quantities of the timber had been stolen and that, in recent years, large quantities had been sold, and that the value of the lands was proportionately reduced," and, further, that "no attempt was made to show from what tracts of land timber had been sold or stolen." (Opinion of Court, R. 242.) Nevertheless the court, in the absence of any testimony or guide by which it could make a re-assessment on each tract for each year involved, undertook to make a re-assessment by fixing an *average* value of all tracts for all years.

While no witness undertook to testify how much land had been cut over, and witness Dennison testified (R. pp. 144 and 147) "that he did not know how much had been cut on Big Island," the uncontradicted testimony of witness, Keaton, does show that Section 22, and the N. W. Quarter of Section 23, T. 4 South, Range 1 West, containing 549.36 acres, were logged in 1920 (R. 97). Under all of the testimony in the case, and the findings of the Supreme Court of Arkansas, when these lands are logged, they are left practically valueless, yet, in spite of the fact that the uncontradicted testimony shows this tract of land to have been of no value subsequent to 1920, the court, by the average method adopted, has ordered the several subdivisions composing this particular cut-over tract, to be assessed at $6,343.68 for each of twelve years, 1915 to 1926, inclusive. If this assessment had been made by the township board in 1921, appellant would have had the right to appeal from the assessment of these particular subdivisions and undoubtedly could have set aside the assessment. If the land had been sold in 1921 to any other person or corporation and such an assessment had been made against it for that year, or for any subsequent year, that assessment undoubtedly could have been set aside on appeal. The assessment is made by the Supreme Court of Arkansas only because the land was more valuable at some time prior to 1921, or because the appellant owned other lands subsequent to 1921 which were more valuable.

This illustration is used because of the uncontradicted testimony identifying some particular tracts of land which were logged in 1920. The same illustration will apply to all other tracts which had been cut over, or which for any reason had a value in any year less than the so-called average value.

No witness was introduced who pretended to have any knowledge of the value of any of appellant's lands in 1915, 1916, 1917, 1918 and 1919. The only possible way in which the Supreme Court could arrive at any value for those years was to take some value shown subsequent thereto and average back. This the court undertook to do. The assessment, therefore, stands as if the assessor in 1915, in making assessments under the provisions of Section 9924, C. & M. Digest, had assessed the property of all natural persons according to the value of that property for that year, but, on coming to the property of appellant, a corporation, had determined that, because the appellant was a corporation, he would not be bound by the value of the property for that year, but would fix the assessment on the value for that year, plus a prospective average value for the next 12 years, or as if the township board, in making its assessment on the cut-over tract, above referred to, in 1926, had not based its estimate of the value on that year, but had based it on the average value for 12 years last past.

Under the law of Arkansas, as it has existed from the organization of its courts until the decision in this case, the sale of a tract of land for anything more than the amount of taxes due thereon has been held void. To illustrate: In the case of Goodrum v. Ayers, 56 Ark. 93, a sale was set aside because of an illegal charge of twenty-five cents. In Cooper v. Freeman Lumber Company, 61 Ark. 36, a sale was set aside because of an illegal charge of thirty-five cents. In Darter v. Houser, 63 Ark. 475, a sale was set aside because of an illegal charge of twenty-five cents. In Harvey v. Douglas, 73 Ark. 221, a sale was set aside because of an illegal charge of $1.85. Under the method of assessment adopted by this court, there is an illegal charge upon every tract of land for every year that said tract of land was worth less than forty dollars per acre, the average which this court has adopted.

Therefore such a system of making assessments overturns the whole basis of taxation and institutes a method of assessing property of corporations entirely different from that used in assessing property of natural persons.

By reference to page 230 of the record, 2nd Exhibit, it will be seen that the lands included in the so-called Big Island group are located in school districts 36, 37 and 28. By reference to Exhibit A (R. 230, 2nd Exhibit, et seq.), it will be found that the levies of taxes varied considerably during the several years and during the same years of this re-assessment. For instance, take the cut-over lands above referred to, which will be found described in five calls on record p. 230, 1st Exhibit, for the year 1921, when it is admitted that the lands were practically valueless. The levy on these lands for that year was 23.7 mills. Other lands in the same group are assessed at 26.7 mills and 28.8 mills. The average system adopted by the court (and which cannot be adopted as to natural persons) means that these worthless lands are grouped and averaged with the lands in the districts carrying higher levies, and vice versa. There is no possible way by which the court can say that this does not work an injustice to the appellant, or to the taxing districts involved. In the years 1917 and 1918, for illustration, there were four rates of taxation, to-wit, 15½ mills, 22½ mills, 25½ mills and 27½ mills. These rates are all based on values fixed in these years. There is not a scintilla of evidence to support the finding that there was any under-assessment for 1917 or 1918. The court has taken a high valuation shown for later years and applied an average based on such high valuation over the former period of several years, but, in applying average assessments for tracts for several years, it has not and cannot average the levies. Therefore, it has denied to appellant, solely because it is a corporation, the rights to which it is entitled under the statutes regulating the methods of fixing assessments and levies.

An assessment by averages is not countenanced by the statutes of Arkansas, except as to certain commodities, like stocks of merchandise, which are averaged for an annual period, and, consequently, in applying the so-called average sys-

tem in this case, the court discriminated against the lands of appellant; but, if it be assumed that, under any circumstances, an assessment by averages would be good, the decision of the court in this case is so arbitrary as to deprive appellant of its constitutional rights. It is conceded that appellant owns approximately 21,000 acres of land, in Arkansas County, lying practically in a continuous body. If appellant's land is to be assessed on a basis of averages, then the basis should be the average value as a whole, yet the court has arbitrarily selected approximately 7,000 acres of what it says is the best land for the purpose of applying the average system, instead of averaging the good with the bad.

Again, if it is to be assessed upon an average basis as to time, the court has arbitrarily fixed that average over the twelve-year period covered by the complaint, and thereby deprived the appellant of the benefit of an average based on lower values prior to the period mentioned in the complaint, or lower values caused by cutting of timber in future years. In other words, the case before this court is that of the consideration of a taxing system which provides that, as to natural persons, land must be assessed according to the value of each particular tract in the year for which that assessment is made, but that lands of corporations may be assessed according to the average value of any number of tracts to be selected by the assessor and according to the average value of said lands in any number of years to be selected and determined by the assessor.

The injustice resulting to appellant from the adoption of the average theory by the Supreme Court of Arkansas in fixing values has been accentuated and multiplied by the application of the same theory in arriving at the proper basis of assessment. The Chancery Court of Arkansas County, in its findings (R. 230) found that the assessments had been at from 20 per cent to 33 1/3 per cent of value. The decree (R. 233), contains the following finding (R. 234):

> "The lands in Arkansas County have been assessed for taxation at various percentages of their actual value, but the average assessment for the period covered by this

suit has been approximately 30 per cent of the actual value thereof, and the court adopts said average assessment of land in Arkansas County as the proper basis of assessment of all the lands of defendant herein."

The Supreme Court, in passing on this point, said (R. 241):

> "It was stipulated that the State Tax Commission had ordered an assessment of all property in the State at 50 per cent of the market value, but the court found the fact to be that this direction had not been obeyed by the assessing officers, and that property in the counties mentioned had been assessed at only 30 per cent of its value. Witnesses who testified on this feature of the case differed widely as to what per cent of the value had been assessed, some placing it higher and others lower than the 30 per cent found by the court. Without reviewing this testimony we announce our conclusion to be that the finding of the court below on this question does not appear to be against the preponderance of the evidence."

It is apparent, therefore, that the Arkansas Courts were not able to determine from the testimony what the actual basis of assessment had been for any year, but have undertaken to supply this deficiency in the testimony by striking an average for twelve years. Under this theory, if other property was assessed at 20 per cent (one of the figures found by the court) in 1915, the appellant is compelled to pay for that year on a basis 50 per cent higher than it should pay, or, if the assessment for any year was only 25 per cent, the appellant for that year is compelled to pay 20 per cent more than justly due. There is nothing more deceptive than an average system. It seems rather strange that, with the testimony varying at amounts from 20 per cent to 33 1/3 per cent, the chancery court should adopt for all time the basis of 30 per cent, near the highest amount given, and that the Supreme Court should affirm an imposition of taxes on that basis, not because it found the amount to be correct, but merely because the finding "does not appear to be against the preponderance of the evidence." In other words, by substituting this judicial method of assessment against the lands of appellant, the burden of proof is

cast on the appellant to show that the assessments made by the duly constituted assessing bodies of the State for a period extending twelve years back, were fair and just. In the case of a natural person, no amount of positive uncontradicted testimony would be sufficient to set aside the assessment. Can any more flagrant case of discrimination be imagined?

The whole theory is nothing more than guess work, and is so unreasonable as to amount, not only to a denial of the equal protection of the laws, but to a taking of property without due process of law, and so far as we know, no court, except the Arkansas Court in this case, has ever held otherwise.

All of the statutes covering the assessment of property provide for assessments by the county and township officers, with the right of appeal on the part of the taxpayer to the courts of the county in which the property is situated. By the statute here under consideration, corporations are liable to be sued and have their property re-assessed by courts in counties in which any part of it is situated. The present case, for instance, involved property in four counties. The statute, as construed by the Supreme Court, authorized the Chancery Court of Arkansas County to make a re-assessment of the property in all of the counties. This is just another one of the discriminations caused by the methods applied to the re-assessment of property owned by corporations under the Back Tax Statute and not applied to the assessment of property owned by natural persons.

In the case of Power Manufacturing Company v. Saunders, 274 U. S. 491, the court held void a statute of Arkansas, which permitted a foreign corporation to be sued in any county in the State, while domestic corporations were required to be sued in counties in which they did business, or their chief officer resided, and natural persons were required to be sued in counties where they resided, or might be found. The court condemned the discrimination in the following language (p. 492):

> "It is conceded that the statutes neither permit a domestic corporation to be sued in a county in which it does

no business and has no office, officer or agent, nor permit a natural person to be sued in a county in which he does not reside and is not found. On the contrary, they confine the admissible venue as to both to counties in which the defendant is present in one of the ways just indicated. But a foreign corporation is differently treated. If it be present in a single county, as by having a place of business there, it is made subject to suit not merely in that county, but in any of the 74 other counties although it be not present in them in any sense.

"We think it very plain that the statutes discriminate against foreign corporations and in favor of domestic corporations and individuals, and that the discrimination is not theoretical merely, but real and substantial."

Further, in answering the suggestion that the statutes merely provided different method of procedure, the court said (p. 495):

"It of course rests with the State to prescribe the venue of actions brought in her courts. But the exercise of this power, as of all others, must be in keeping with the limitations which the Constitution of the United States places on State action. Procedural statutes are not excepted, but must fall like others when in conflict with those limitations. This is illustrated in a recent case where a statute of Arizona forbidding the granting of injunctions in certain situations was held to be in conflict with the equal protection clause of the Fourteenth Amendment and invalid, notwithstanding a contention that it was merely a procedural provision excluding a particular remedy in equity but leaving remedies at law open, Truax v. Corrigan, *supra*, pp. 322,330. Further illustration is found in a still later case where a Wisconsin statute subjecting foreign corporations to a burdensome procedural requirement not laid on other litigants was pronounced invalid under the same constitutional provision, Kentucky Finance Corporation v. Paramount Auto Exchange Corporation, 262 U. S. 544. And on turning to State decisions we find direct rulings that venue provisions must conform to the equal protection clause and

are invalid where they discriminate arbitrarily against either individuals or corporations, Growers' Fruit Growing Union v. Kern County Land Co., 150 Cal. 466, 474-475; McClung v. Pulitzer Publishing Co. 279 Mo. 370."

In the case of Kentucky Co. v. Paramount Auto Exchange Corporation, 262 U. S. 544, cited in the above opinion, the court, in holding the statute of Wisconsin void, said (p. 551):

> "Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin—a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary."

The present statute has required appellant to submit to a re-assessment of its property by a method entirely different from any which could be applied to natural persons in the same situation, with the result that appellant is confronted with a judgment for thousands of dollars which admittedly could not have been rendered against "an individual" defendant "in the same situation. The discrimination" is "essentially arbitrary."

In Kansas City Southern Ry. Co. v. Road Improvement District, 256 U. S. 658, it appeared that the assessors of a highway improvement district adopted a different method in assessing benefits to railroad property from that used in other cases. This court held the assessment void, and said (p. 661):

> "Obviously, the railroad companies have not been treated like individual owners, and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law." • • • "Equal protection of the law must be extended to all."

We submit in this case that the appellant has not been treated like individual owners, but on the other hand, by the method of re-assessment adopted by the court, has been discriminated against in every essential particular so that we

might paraphrase the above quotation by saying "obviously the appellant here has not been treated like individual land owners," and "the discrimination is so palpable and arbitrary as to amount to a denial of the equal protection of the law."

Respectfully submitted,

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APPENDIX

Crawford & Moses' Digest

BACK TAX LAW

Section 10204. *Proceedings.* Where the Attorney General is satisfied from his own investigation or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that, in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes or any corporation claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant, and the Governor is authorized to employ any attorneys that may be necessary to assist the Attorney General in such suits; provided, that this Act shall be construed as retrospective as well as prospective in operation. Act March 12, 1913, p. 724.

Section 10205. *Compensation of Special Counsel.* In all cases where the Governor has appointed, or may hereafter appoint, special counsel under Section 10204 to assist the Attorney General in the collection of overdue taxes from corporations, such special counsel shall receive a reasonable compensation for his services, dependent upon recovery, and to be fixed by the chancery court trying said cause; but in no

case shall such counsel receive more than twenty per cent of the amount recovered. Act May 30, 1911, p. 324.

Section 10206. *Warning Order.* If the Attorney General shall certify on the complaint to be filed in said suit that he can not find any one in the State upon whom service can be had so as to bind said corporation according to existing laws, the clerk shall enter a warning order against said corporation, requiring the defendant to appear in said cause on the first day of the next term of the court to answer said complaint, which warning order shall be published and proved as other warning orders are required to be published, and proved by law, and with the like effect. Act March 1, 1887, p. 33, Section 2.

Section 10207. *Complaint to Describe Property.* Said complaint shall describe as nearly as may be the property on which said taxes have accrued, and the State, counties, school districts and municipal corporations aforesaid shall have a lien on said property from passage of this act, for the payment of said overdue taxes, to be enforced by suit as herein provided. Id. Sec. 3.

Section 10208. *Procedure.* On a final hearing the court shall determine the amount of said State, county, school district and municipal taxes, and the penalties and costs due on the same, if any, and to whom said taxes are payable, and shall decree payment thereof accordingly, and where for any reason the property on which said taxes may have accrued shall not have been assessed, the court shall refer the matter of such assessment to the assessor of the county in which said property may lie, who shall make his assessment for any past year or years mentioned in the order of reference, and shall return the same into court; and in case the property shall belong, or have belonged, to any delinquent railroad company, the court shall in like manner refer the assessment of said property to the proper officer or board of officers or commissioners, whose duty it shall be, at the time of the making of said reference, to assess property of like kind, and they shall report their assessment to the court, and the court shall have power to hear testimony and to change said assessment as justice and equity may require. Id. Section 4.

Section 10209. *Enforcement of Lien.* On such final hearing the court shall render a decree declaring and enforcing said lien for taxes, by sale of the property to which said taxes may have attached. In case of a railroad, the lien shall be decreed against the whole line of the road, including the main line and side-tracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, tunnels, cuts, ties, trestles and bridges, and all lands in the State belonging to such corporations. The court shall decree the said taxes shall be paid within three months after rendering said decree, and that in default thereof said defendant shall pay a penalty of ten per centum on the amount of said taxes. Id. Sec. 5.

Section 10210. *Sale of Property.* The sale of any property under said decree shall be made in the same manner as other sales are made under other decrees foreclosing liens in chancery, and with like effect, and the court shall distribute any fund accruing under this act among the State, counties and municipal corporations and school districts entitled thereto by law. Id. Sec. 6.

Section 10211. *Redemption.* All parties having any interest in any property sold under this act may redeem the same at any time within one year from the date of said sale, by paying into court the amount of said decree and penalty on the same, at the rate of twenty-five per centum per annum. Id. Section 7.

Section 10212. *Deed.* In case no such redemption is made, the court shall cause a deed to be executed to said purchaser, conveying said property to him absolutely, and said deed shall have the same force and effect that are given by law to other deeds for property sold under decree in chancery. Id. Section 8.

Section 10213. *Suits to Have Precedence.* Suits brought under this act shall have precedence of all other suits in the courts in which they may be pending and shall be disposed of without unnecessary delay, and no appeal from any decree rendered in any suit brought under this act shall be taken after thirty days from date of such decree. Id. Sec. 9.

Sec. 10214. *Decree for all taxes.* The decree rendered in said suit shall be for all taxes due the State, and to the counties, cities and other political subdivisions of the State, and shall not be confined to the taxes due in the county in which the suit is brought. Id. Sec. 10.

OTHER STATUTES CONSIDERED

Section 9919. *Rules for Valuation.* Each separate parcel of real property shall be valued at its true market value in money (a), excluding the value of crops growing thereon; but the price at which such real estate would sell at auction, or at a forced sale shall not be taken as the criterion of such true value. Each tract of land belonging to this State, or to any county, city, town or charitable institution, whether incorporated or unincorporated, and saline, swamp, seminary, school or mineral lands held under a lease exceeding five years, and not exceeding ten years, shall be valued at such price as the assessor believes could be obtained at a private sale for said leasehold estate. Personal property of any description shall be valued at the usual selling price of similar property. at the time of listing. If any such property shall have no well fixed or determined value in that locality at the time, then the same shall be appraised at such price as in the opinion of the assessor could be obtained therefor at such time and place. (b) Investments in bonds, stocks, joint stock companies or otherwise shall be valued at their value in money, and the quotations and selling price thereof may be considered in determining their values. Money, whether in possession or on deposit in this State, or out of it, subject to the order or control of such person listing, shall be entered in the statement at the full amount thereof. Every credit for a sum certain payable either in money, property of any kind, labor or service, shall be assessed according to its true value. If for a specified number or quantity of any article or articles of property, or for a certain amount of labor, or for services of any kind, it shall be assessed according to its true value. Annuities or moneys receivable at a stated period shall be rated at the price which the same may be worth in money. Where the fee of the soil in any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right to any mineral

therein in another or others, the same shall be valued and listed agreeably to such ownership, in separate entries, and taxed to the parties owning the same, respectively.

Section 9924. *When and How to Assess Real Estate.* Every assessor on or before the second Monday in September, in the year eighteen hundred and eighty-seven, and every second year thereafter, shall make out and deliver to the clerk of the county court a report (a) in tabular form, contained in a book to be furnished him by such clerk of county court, of the amount, description and value of real property subject to be listed for taxation in his county, and the amount and description of all lands belonging to the United States and to the State of Arkansas; also of all other lots, parcels or tracts of land exempt from taxation, which returns shall contain:

FIRST: The names of the several persons, companies or corporations in whose names the several tracts of real property, other than property situate in incorporated cities and towns, in each congressional township within his county, shall have been listed, and in appropriate columns, opposite each name, the description of each tract by section, or the largest subdivision of which the same is capable, designating the number of the section and the part thereof, and the congressional township or survey, and the value of each tract determined by the assessor, lands belonging to the United States or to this State not to be valued.

SECOND: The names of several persons, companies or corporations in whose names the several lots of real property in each town or city in his county shall have been listed, and in appropriate columns, opposite each name, the description of each lot and value as determined by the assessor, and such description shall designate the town or city the number of lots and parts thereof; and, if part of a lot is listed, it shall state the number of feet along the principal street on which it abuts. If the name of the owner of any tract of land or lot be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot. In making such return, each separate tract of land in each congressional township shall be placed according to the numerical order of the section, and each town or city lot according to the numerical

order of lots and blocks, which returns shall be as near the following form as practicable (b):

Names of Owners	Part of Section	Section	Township	Range	No. of Acres	Value	No. of School Districts	No. of Acres U. S. Lands	No. Acres State Lands	No. of Acres Otherwise Exempt	Value

With the following affidavit:

I, _____, assessor, do solemnly swear that the foregoing is correct, and that I have appraised each tract or lot of land, except United States or State lands, at its true value in money, and not at what it would bring at auction or at a forced sale, so help me God.

_____

Assessor.

Subscribed and sworn to before me this _____ day of _____ 19__.

_____, Clerk

Section 10009. *Clerks to Make Tax List.* The clerks of the county court shall make out in books prepared for that purpose, in such manner as the Auditor of State shall prescribe, a complete list or schedule of all the taxable property in his county, and the value thereof, as equalized and arranged in the following form:

Each separate tract of real property in each congressional township in his county, other than town or city property, shall be contained in a line, or lines, opposite the names of owner or owners, arranged in numerical order.

Each separate lot or tract of real property in each city or town shall be set down in a line, or lines, opposite the names of the owner or owners, arranged in numerical order.

The aggregate value of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of each person, company or corporation, within each congressional township, shall be placed in a column opposite the name of the owner, person, company or corporation in whose name the same is listed; the names of the persons in each school district who are not residents of any incorporated town, city or village shall be placed in alphabetical order in one list, and the names of the persons who are residents of any incorporated town, village or city shall be entered in another list in alphabetical order.

Section 9865. *Basis of levies.* All levies of taxes in cities and towns shall be based upon the appraisement of the county assessor, as equalized for the levy of State and county taxes, and placed upon the tax books by the clerk of the county court, and the same shall be collected in the same manner and by the same person that county taxes are collected. Id. Sec. 11.

Section 9866. *Levying Court.* The county court of each county, composed of the judge and a majority of the justices of the peace of each county, shall meet annually, on the first Monday in October, for the purpose of levying the county taxes or making appropriations for the expenses of the county. Act March 28, 1887, Section 1, p. 143.

Section 9870. *Who May Object to Levies.* Any person having real or personal property assessed for taxation may appear in person or by attorney, before the county court at the time of the levy of taxes by it, or at the succeeding term thereafter, and, by petition or remonstrance, object to the levy of any specific tax for illegality, and may, by sworn petition, set forth and show any facts upon which such illegality rests.

If the same be based upon facts, it shall be the duty of the court to determine both the law and the facts presented, and for that purpose shall hear any testimony offered; and if the court should rule against the objection so presented, the party so objecting to such levy may appeal from such ruling to the circuit court of the county, and, upon giving bonds, within ten days, with good and sufficient security in double the amount of specific tax levied upon the property of the party objecting subject to the approval of the court, conditioned for the payment of such tax should it be decided to have been lawfully levied, the same shall operate as a supersedeas of the collection of the same. Provided, it shall not operate to prevent the same being placed upon the tax book. Said bond shall be given to the State of Arkansas, and, in the event such levy shall finally be declared illegal, such judgment shall operate as an acquittal to the collector and his securities for the noncollection of the tax. If the tax be finally declared legal, the collector shall immediately proceed to collect the same as in other cases, or by action on the appeal bond. And provided further, any taxpayer feeling himself aggrieved by any such levy may, at any time before the returning of delinquent taxes by the collector for that year, appeal as hereinbefore provided. Act March 28, 1887, Section 12.

ACT 147 OF 1919

AN ACT to Provide for the Assessment and Valuation of the Taxable Property of the State of Arkansas and for Other Purposes.

Section 1. Provides for township board of assessment and valuation.

Sec. 2. County Judge to file names of members of boards.

Sec. 3. Arkansas Tax Commission shall prepare and furnish blanks, records, etc. (Not material).

Sec. 4. Fixes time for assessment; provides for publication of notices.

Sec. 5. Duty of boards of assessors.

Sec. 6. Manner of listing property owned by non-residents. (Not material).

Sec. 7. Delinquent assessments; penalty. (Not material).

Sec. 8. Delinquent personal property; how assessed. (Not material).

Sec. 9. Compensation of township members of the board of assessment and valuation. (Not material).

Sec. 10. Property owners to take oath to correctness of list.

Sec. 11. Persons aggrieved may appeal to county court.

Sec. 12. Assessors to call annual meeting of the members of the board of assessment and valuation. (Not material).

Sec. 13. Assessor required to file biennial report of his assessment of real estate. (Not material).

Sec. 14. Assessor required to make annual report to Arkansas Tax Commission. (Not material).

Sec. 15. Compensation of assessors. (Not material).

Sec. 16. Manner of listing property erroneously left off of tax rolls. (Not material).

Sec. 17. Penalty for failure to comply with provisions of this Act. (Not material).

Sec. 18. Repeals Acts 234 of 1917 and 124 of 1913 and all laws in conflict. Emergency declared; effective after passage. (Not material).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

Section 1. On or before April 1st, of each year the county judge of each county in this State shall appoint two reputable and intelligent property owners of each township in the county, and in each ward of cities of the first class, who shall have been residents of said township or ward for a period not less

than three years prior to said appointments who, together with the county tax assessor, shall be known as the township board of assessment and valuation for said township or ward. The assessor or his deputy shall administer the same oath to each member of said board as subscribed to by him, before any work shall be done by them. When any member of said board shall fail to appear for service for any cause, the assessor or his deputy shall appoint property owners who shall take the oath herein provided, and perform the duties and receive compensation provided for the members of said boards.

Sec. 2. Each county judge shall, on or before the 1st day of April, file in duplicate with the county clerk, the names and postoffice address of the members of said board appointed by him; and, the county clerk shall retain the original for the files of his office and forward the copy to the Arkansas Tax Commission, on or before the second day of April each year.

Sec. 4. All property in this State shall be assessed by the duly authorized authorities according to its value on the first day of May or average as required by law, and the county assessor shall publish his notice of dates on or before the second Monday in April, annually, in some newspaper published in said county, and by posting notices in one or more places in each township or ward, that he will, beginning on the first Monday in May, and on a day therein named, attend at the usual voting places in said township or ward, and such other places as he may designate, for the purpose of taking a list of the real and personal property of each resident of said township or ward; also, the per capita tax and postoffice address of such as are liable to pay said tax, and said assessor shall remain in each township or ward at least one day, and one day extra for each seventy-five voters if he deems necessary. Upon application by the property owner, the assessor shall furnish appropriate printed blanks upon which to list and report the property owned by such party subject to taxation.

Sec. 5. Each board shall, during the time advertised for said township, list and value all real estate situated in said township, and shall list and value all personal property presented to the board by the owner, his agent, or by lists furnished by the owner or his agent properly verified. Each

owner of personal or real property in any township in this State shall be required to list their property to be valued for taxation with the board of such township during the time said board is sitting; each property owner shall be required to answer upon oath, all questions propounded to him by said board, and to furnish proof demanded as to purchases, sales, transfers, improvements, accounts, notes, stocks, bonds, bank notes, bank deposits, marginal and exchange profits, invoices, insurance carried, or any other information requested by said board.

Sec. 10. Before any person shall list his property for taxation, the assessor, or one of the members of said board, shall administer to said person, the following oath, towit: "You do solemnly swear, or affirm, that you will render a true and complete list of all the property subject to taxation, either tangible or intangible, in or out of the State, that you are required to list in your own name or right, or that of any other person or owner for whom you may be required by law to list for taxation; and that you will make true and perfect answers to any and all questions that may be demanded of you with reference to the amount, kind, quality and value of such property, and any other inquiry by which the true amount, kind and value of such property may be ascertained, so help you God."

Sec. 11. Any person who shall be aggrieved by the action of the board of assessment and valuation, in valuing their property, may appeal to the county court; *provided*, to take such appeal, the owner shall file petition and affidavit of appeal with the county clerk, for which $1.00 shall be paid as cost to the clerk, who shall summon the members of the board of such township, immediately, and issue such process as said board, or the county judge may request for witness and evidences of value and amount of property; *provided*, all appeals must be filed on or before the 25th day of September of each year and shall have preference over all matters in said court, and shall be heard and order made on or before the third Monday in October; *provided*, no reduction shall be allowed except on evidence corroborative of that of the owner. The clerk shall mail statement to the Tax Commission on or before the third Monday in October each year, showing amount of deduction allowed by the court on appeals.

TESTIMONY

S. B. DENNISON, a witness for plaintiff, testified by deposition taken March 6, 1926, in substance, as follows (R. 30).

I live at Stuttgart, Arkansas, and have lived there three and a half years. Before that, I lived at St. Charles, Arkansas County, twenty years.

I buy and sell timber lands, and have been in that business about nine or ten years. I am familar with the values of timber lands in Arkansas County, and have bought and sold several tracts in that county, and in Phillips and Monroe Counties. I never had any dealings in Desha County.

"Q. There are approximately eighteen thousand, five hundred acres of land belonging to the White River Lumber Company in Arkansas County, and approximately twelve thousand, five hundred in Desha County, approximately seventy-five hundred in Phillips County, and approximately four thousand in Monroe County, are you familar with those lands, Mr. Dennison?

A. I am not familar with any of the land in Desha County and very little of it in Phillips County" (R. 31).

I am familar with the lands in Arkansas and Monroe Counties. I have been on those lands a lot, and have bought land adjoining those, and have logged and sold logs in there for the last 7, 8 or 9 years. I bought some land for twenty-five or thirty dollars an acre in there a few years ago. I know what the lands would sell for in the last 4, 5 or 6 years. They own a piece in Big Island Chute, what we call Big Island there in Arkansas County, that is a very valuable tract, I think the best piece of timber land in the whole country. I think there is somewhere around 7,200 acres that they own on that Island.

"Q. What is the land worth?

A. Well, that land's worth sixty-five dollars an acre. I would be glad to buy it at sixty-five" (R. 31).

They have five or six hundred acres just west of Big Island Chute, in Arkansas County, that is as good as the Big Island land.

"Q. Did you say you would be willing to pay sixty-five dollars an acre for the seventy-two hundred acre tract?

A. Yes, sir.

Q. And the five hundred acres?

A. Yes—they have cut some on there. Yes, sir; taking out what they have cut over, I could handle that at sixty-five dollars an acre.

Q. Would you make that offer?

A. Yes, sir.

Q. Now, at sixty-five dollars an acre?

A. Yes, sir (R. 32).

They have cut about 5,500 feet of commercial good timber per acre on that land. I think the 7,200 acres will average that, and the 500 acres something like that.

I bought 117 acres on Big Island last year, and cut about 8,000 feet per acre. I cut just a little over 900,000 feet off the 117 acres. I do not think the White River Lumber Company lands, as a whole, would average that much. I think it will average 5,500 feet per acre. I was over that land last winter. I logged there adjoining it and went through it.

I bought a piece of land from Mr. Storthz here, of Little Rock, and then I bought a piece of land from the Porters, who live up in Michigan, and some from a fellow that lived in Michigan. I bought several pieces. I paid W. P. Porter and wife $25.00 an acre for 2,856 acres.

(Witness identified a certified copy of a warranty deed, dated January 31, 1920, signed by W. P. Porter and Hattie J.

Porter, to S. B. Dennison, H. F. Linder and J. M. Linder. The deed was introduced in evidence and attached as Exhibit "A" to the deposition) (R. 35).

I am in the business of buying timber for profit. I looked at that piece of timber, he made me that price and I paid it. I guess we made a hundred thousand dollars on the 2,856 acres. We cut the logs and sold the logs. We cut about seven thousand feet per acre from that land and it has lots of timber on it yet. There is about five or six million feet left on it now.

We have been operating there six years, and I guess our profit has run ninety or one hundred thousand dollars.

"Q. Have you bought any other lands—First I will ask you how this land compares with the lands of the White River Lumber Company in question?

A. The White River Lumber Company owns a lot of land adjoining this Porter tract of land.

Q. How is the timber on it compared with the land you bought?

A. Well, I think it runs something like this land.

Q. About the same?

A. Yes. Now, they have cut their timber off of this land adjoining this since 1920; they have done lots of logging in there, right in this particular neighborhood.

Q. Have they cut it all off since then?

A. No; all they cut has been cut since 1920 in that neighborhood.

Q. And how did your land compare with that land before this timber was cut?

A. Well, I expect it would all run about the same in there. They had a lot of land that didn't have anything on it,

and they had a lot of land that had good timber on it. They got some in there that's not been cut yet, that's pretty good timber.

Q. What was their land worth before this timber was cut off, from 1920 on?

A. Well, it was worth twenty-five to thirty dollars a thousand, anyway.

Q. How much?

A. Twenty-five to thirty dollars. A fellow could have given twenty-five to thirty dollars a thousand and made money on it.

Q. A thousand?

A. An acre. An acre.

Q. They could have given twenty-five to thirty dollars an acre and made money on it?

A. Yes, sir.

Q. At the rate you made on it?

A. Yes, sir'' (R. 39).

I bought seventeen hundred acres from L. Storthz and paid him $51,000.00 or $30.00 an acre for it. That land is on White River, in township three south, two west.

''Q. How is that located in reference to the White River Lumber Company's?

A. Well, they own land on the east side of this piece of land.

Q. Touching it?

A. Yes. Then they—on the other—on across the river, over on the east side, in Arkansas County, they own land. Now, all that land has been cut over by the White River Lumber Company" (R. 40).

The deed recites the correct consideration for that land. At one time he asked me $50.00 an acre for it. That was early in 1922, but I got hold of that land by waiting. I made some money, but I did not make any money to holler about on that piece of land. At the time I bought that land, I paid all it was worth.

"Q. And how, with reference to its value, does that land compare with the value of the White River Lumber Company land, except the Big Island and the five hundred acres?

A. Well, that land—they own some land right next to the river, between this land and the river, that they cut a lot of timber off of, I don't know how much but they done a lot of logging in there. I expect it would run about like that land" (R. 41).

"Q. How does the value of the timber compare with yours?

A. Well, it runs about the same; all in that section of the country, the timber is about the same" (R. 41).

When I bought this land from Mr. Storthz, the market was low. It was almost forty to fifty per cent lower than it is now. I sold those logs at a net to me of $17.25 f. o. b. river bank. Now I deliver them on cars free, but I sold them delivered on board cars at DeVall Bluff and I got $24.50 a thousand. The first logs that I ever sold was in 1917 and I sold them for $12.00. In 1919 I got $18.00 for logs. Then the latter part of 1919, I got maybe $20.00 and $22.00 for gum logs. Oak logs have always been, until now, a few dollars higher than gum, but right now gum is the highest. The average value of logs would be about $20.00 during the last seven years.

(The deed from L. Storthz to S. B. Dennison, above referred to, was introduced in evidence and attached as Exhibit "B") (R. 63).

I am familiar with the sale of timber lands aggregating 5,348 acres in Monroe, Phillips and Arkansas Counties, the sale being made by J. T. Wylie of Saginaw, Michigan, to S. M. Bush of Cotton Plant. I worked the trade up and they paid me a commission. I think all of the land was in four south, one west. The consideration was $45.00 per acre. The total amount of money was $240,660.00 and some few cents. I had that deal made myself, but I could not finance it, and turned it over to Mr. Bush.

(The deed referred to was introduced in evidence and attached as Exhibit "C") (R. 66).

That trade started in about 1922, and finally resulted in the transfer of the land on May 24, 1924. They were two years making that trade.

"Q. You have said that the value of land then was about forty or fifty per cent lower than now?

Mr. Buzbee: No, he didn't say that.

A. No, I said logs, between the summer—that is, the summer time of 1922 and right now. You can sell logs, I understand, right now, is exceptional time—there is a good demand for logs right now that we don't often have" (R. 44).

In 1919, I sold that land to Wylie for $25.00 an acre. I am familiar with the number of feet to the acre that has been cut from that land.

"A. Well, I have got—now, understand, my commission on that—out of that land's so much per thousand. So, now, they paid me to cut in there and we have cut on that six hundred acres and we have cut close to four million feet now.

Q. How many feet to the acre did that make?

A. Well, that would make—let's see, nearly seven thousand; sixty-five hundred, something like that.

Q. How does that land compare with the White River Lumber Company's land, exclusive of the Big Island and the five hundred acre tract referred to?

A. Well, they own—the White River Lumber Company owns land adjoining this land all around in that county, maybe, and one piece down in Monroe County that they don't own there, a three hundred acre tract; they own some adjoining that in Phillips County, and one corner, I think, in Monroe County. They cut their land in Monroe County adjoining this in three one.

Q. When was that cut?

A. Well, that was cut in 1918, 1919 and 1920, along in there.

Q. Before that was cut, how did the values of the White River Lumber Company land compare with the values of these lands?

A. Well, I expect it run along about like that land.

Q. About the same?

A. All in that section, yes, sir'' (R. 45).

The consideration for this sale was $45.00 per acre. The consideration has not been paid. They are to pay when they get it.

CROSS-EXAMINATION

I based my ideas of values on transactions in which I have bought and sold lands. I have my partners that live in Memphis, and we have bought these tracts together. They were bought for logging purposes, and I have logged them.

I bought 117 acres on Big Island from J. A. Price, who lives at Ethel, Arkansas. I paid him $2,750.00, about $25.00 an acre. I borrowed the money from S. M. Bush and the deed was made to him. That was purchased sometime in September or October, 1924.

"Q. Now, isn't it a fact that in 1919 and 1920, immediately after the war, there was a great revival of building, and that prices on logs and lumber advanced considerably?

A. Yes, sir; logs went up until the Spring of 1920. After early summer you couldn't hardly sell a log in 1920, you couldn't—I had some contracts that I had made early in 1920 for fall delivery and I cancelled some of them.

Q. It is true, though, that the price of logs, and consequently the price of timber and lands, has varied considerably along in this period, depending on the demand for lumber?

A. Yes, sir; some years you would get more, some years you would get less for logs.

Q. Isn't it also true, Mr. Dennison, that the cost of logging in that country varies a great deal, depending on the seasons and the overflow or lack of overflow from White River?

A. Yes; you get logs hauled some dry seasons cheaper than you do rainy seasons" (R. 48).

The lands about which I have testified, and covered by these deeds introduced as exhibits to my deposition, are located in the same territory as the White River Lumber Company lands and are practically the same character of lands. All of the lands are subject to overflow and are under water from four to six months every year. I figured on having about a six months logging term each year. The sales about which I have testified are the principal sales I have known about. The Magnolia people bought some land from Mr. Storthz in the lower part of Arkansas County and Desha County—they bought six, seven or eight thousand acres of timber from them in the last two or three years. I sold my interest this past year in the Porter land.

I don't value the land worth anything after the timber is off of it. The taxes on the land I bought from Storthz were $415.00 last year; that is, $415.00 on approximately 1,700 acres of land. I do not know what the assessment is. The taxes

on the Porter land are about $360.00 a year; that is, on 2,856 acres. The taxes on the land conveyed from Wylie to Bush are twenty-two to twenty-three hundred dollars on 5,348 acres.

C. A. KIRKPATRICK, a witness for plaintiff, testified by deposition taken March 6, 1926, in substance, as follows (R. 52):

I live at St. Charles, Arkansas County, and have lived there practically all my life. I am forty-four years old. My business is first one thing and another. I have been working in timber some, and at the present time, I am working for Mr. Wylie of Saginaw, Michigan. I have helped cruise timber lands in Arkansas County. I think I am familar with the White River Lumber Company's lands over there. I have been over the Monroe County and the Arkansas County tracts of land more than the rest. I guess I go over it two or three times a year. I hunted quite a bit on it and, of course, a man hunting walks along all over. I have cruised timber and have a pretty good idea about it. All I could go by as to the worth of the White River Lumber Company lands would be hearsay about what has been offered to them, but I have a good idea about what amount of timber is on it.

On the best part of their land, which is located on Big Island, my estimate would be around 5,500 to 6,000 feet an acre. The upper end of Big Island is better than the lower end. I expect there are acres on the upper end there will cut 25,000 feet to the acre, but the average would be from 5,500 to 6,000.

The timber is about 80 per cent gum, 15 per cent oak and the balance ash and cypress.

"Q. Now, you have estimated the timber on Big Island —the White River Lumber Company has about eighteen thousand, five hundred acres in Arkansas County, and about four thousand in Monroe County, and what is the average value —or, if you don't know the value, what amount of stumpage is there on this other land, exclusive of the Big Island tract?

A. Well, there is a piece—I don't know just how many acres, but I know they got some land between Big Island and the hills; there's a bottom in there between Big Island and the hills. That is—well, I guess it is about the same as on Big Island.

Q. Just as good as Big Island?

A. Yes.

Q. Approximately how many acres are there on that?

A. Well, I guess there is three hundred acres, or more.

Q. Now, outside of the Big Island tract and this three hundred acres or more tract, which you have testified about, what amount of stumpage, how many thousand feet to the acre, could you get off the rest of that land?

A. Well, there is one tract that they got that I seen the average on was a little better than forty-nine hundred feet to the acre; while they didn't cut it clean there was some left on it.

Q. Where was that located?

A. That was in four one, I believe.

Q. Four south, one west?

A. Yes, sir.

Q. What county is that in, Monroe or Arkansas?

A. Monroe.

Q. In Monroe County. You say you saw the figures. Where did you see the figures?

A. I seen Mr. Keaton with the books" (R. 56).

The Monroe County land that they got is not quite as good as the Big Island. It will probably average 4,000 to 4,500 feet to the acre. They got some land down below this Big Island tract, in Arkansas County that will go about 4,500 feet to the acre. I do not know what the value would be on the land after the timber was taken off.

I have seen the Phillips County land. The stumpage on it would be about the same.

I saw the Desha County land about six years ago. We cut about four thousand to forty-five hundred feet to the acre on some of it down near the Arkansas River about six years ago.

I know the White River Lumber Company cut some timber this winter on Big Island. They were cutting it at their mill in Clarendon.

CROSS-EXAMINATION

I have heard Mr. Dennison's testimony in reference to the sales of the Porter, Storthz and Wylie tracts of land. I am familiar with the Wylie tract, and have been over the Porter and Storthz tracts several times.

"Q. Are they about the same character as the White River Lumber Company land?

A. I don't think there is but very little difference in them" (R. 59).

W. W. KEATON, a witness for defendant, testified by deposition taken June 10, 1926, in substance as follows (R. 77):

I am thirty-four years old, and live at Clarendon. I have lived there since January 1, 1925, and also lived there in 1922 and 1923. With exception of the time that I have lived at Clarendon, I have lived in Arkansas County all of my life.

I am in the timber and lumber business, and have been with White River Lumber Company, as manager ever since

1919. Previous to that time, I was with them I think, two years, in different capacities.

Before entering the employ of the White River Lumber Company, I was County Surveyor of Arkansas County, engaged in surveying and engineering business. I am familiar with practically all of Arkansas County. I was surveyor practically four years until I resigned to go with the White River Lumber Company. The approximate area of Arkansas County is a thousand square miles, or six hundred forty thousand acres. About twenty-five per cent of the county is timber lands now. Originally Arkansas County was about half timber. A lot of that timber land has been put in cultivation. Practically all that is not in the overflowed areas is in cultivation. All of the White River Lumber Company land is timber land. As a whole it is about the same average kind of timber land as the other timber lands of the county.

I am familiar with the lands sold by Porter, to S. B. Dennison, H. F. Linder and J. M. Linder, about 1920.

"A. The Porter tract of land, as we all know it, consists of part of Hickory Ridge, Caney Point, and Rattle Snake Hill. It is not in the lowest part of White River bottoms. It is on a very high ridge and is considered very valuable for farming purposes. It overflows—I don't suppose it will overflow one year out of ten, and as everybody knows, the higher ground always has the better grade of timber and more gum timber. This Porter tract of land was very good timber. In fact, I think it was as good a tract of timber as I ever saw.

It lays on the north and west side of Esse's Bayou and in going into the timber, after you leave the high upland, you find a second bottom, and this Porter land is the second bottom. Then when you cross Esse's Bayou you drop off into land about ten or twelve feet lower, which is overflowed every year.

Q. What character of timber was on this Porter land?

A. Principally gum and, well, it must have run about sixty per cent gum and about thirty per cent—twenty-five to thirty per cent forked leaf white oak and cow oak, and also

quite a lot of hickory. That's where part of this tract of land got its name as Hickory Ridge, on account of the fine hickory that was on it.

Q. Would you say then, Mr. Keaton, that that land was as valuable or more valuable than the White River Lumber Company land?

A. I would say that it is more valuable than the White River—

Mr. Rose: Or less valuable?

(Witness Continuing): I would say that it is more valuable than any tract the White River Lumber Company owns.

Q. I believe you stated that it had a value for agricultural purposes.

A. Yes, sir" (R. 79).

The White River Lumber Company has a few acres on high ground. One corner of a tract of their land corners on the edge of Rattle Snake Hill, and there is about five or six acres in that. I would say not over ten acres of their entire holdings are on high ground. The balance of the land is in the low bottoms. It has overflowed every year since I have been connected with it. It overflows from sixty days to six months every year; an average of about four months out of the year.

I am familiar with the tract of land owned by Storthz in Arkansas County. I worked for Mr. Storthz two years. During that time I surveyed a large part of his lands, and, prior to that time I was associated with Captain Maxwell at DeWitt, and we jointly surveyed and estimated all of the Storthz land. During the time I was with him myself, I surveyed the tract of land in Arkansas County in township 3 south, range 2 west, which is the tract that he sold to Mr. Dennison. At that time he had twenty-four thousand acres. He has sold quite a lot of land, or timber since that time. The entire Storthz tract is in Arkansas County, and it is just about like the White River

Lumber Company's tract as a whole. It all lays in the same territory and adjoins in a number of places. In fact, in the territory east of Weber they are the only two owners of any consequence. I am familiar with the tract of land sold by J. T. Wylie to S. M. Bush in January, 1924. The Wylie tract is very good timber. Most of it is in Monroe County, in township 3 south, and they have very little waste on the entire tract. It runs very heavy to gum, also some forked leaf white oak on the high parts of it. A small amount does not overflow, but most of it is in the bottoms. A few years previous to 1924, H. B. and T. T. Bateman sold it to Mr. Wylie at $25.00 per acre. It is still owned by Mr. Bush.

There are other large bodies of timber land in Arkansas County owned by individuals. The Storthz timber is approximately twenty-four thousand acres. The L. M. Jones tract of about fifteen thousand acres is owned by an individual, Linah Melvin Jones.

Mr. W. S. Probst, at the time I was surveyor, owned about four or five thousand acres. The Chicago Mill and Lumber Company has about seven or eight thousand acres, and the Henry Wrape Company owns a vast acreage in the western part of Arkansas County, probably three or four thousand acres on Bayou Meto. J. S. Bilby owns a large acreage. I once made a large map of Arkansas County, and I know that he owns a large acreage of scattered lands, about one thousand acres I suppose.

E. L. Stocking owns, or did own, approximately two thousand acres. A. Moss of Almyra, owns approximately two thousand acres. This S. M. Bush land is not in Arkansas County, only a small part of it.

There are hundreds of owners of small tracts from forty acres up to a section. I was only trying to name the ones that own large acreage. There are approximately 150,000 acres of timber lands in Monroe County.

The White River Lumber Company has paid its taxes on lands in Arkansas and Monroe Counties as assessed by the assessing officers (R. 83).

I think, taking the entire White River Lumber company's tract as a whole, it is about the same class and value of timber land as the average for the entire county (R. 83).

"Q. Do you mean to tell me that the White River Lumber Company's land is no more valuable than a lot of little one-horse, forty-acre tracts owned by individuals that is forfeited frequently for taxes?

A. Well, you could pick out a lot of small tracts of land that are worthless. You could pick out a lot of our land that is worthless. As a whole, I say that it's about of equal value.

Q. Isn't it true that there are thousands of acres in Arkansas County on which there is not even one hundred feet of merchantable timber?

A. Well, a hundred feet is a very small amount of timber. If it had one tree it would have more than—

Q. Yes, of course; but there are thousands of acres that haven't even one tree?

A. There are lots.

Q. What would your company give for such lands?

A. It would be worthless.

Q. Then you would not contend that an assessment of that land at four dollars an acre, which has been the case, would be fair to the owner of that land, when your land is assessed at only four dollars an acre?

A. There are thousands of acres of the White River Lumber Company lands that are just as worthless" (R. 84).

I do not mean to testify that the White River Lumber Company's land is not worth more than the cut-over tracts, but I do mean to testify that it is of about equal value with the

entire timber lands of Arkansas County. I testified that the lands of the White River Lumber Company were about the same as the lands of Storthz. I know that sixteen hundred or seventeen hundred acres of the Storthz land sold for thirty dollars an acre to Dennison and others. I bought 1,700 acres from Mr. Storthz about sixty days ago for $12.00 an acre. I did not know that Storthz had held the tract sold to Dennison for $50.00.

When I was working for Mr. Storthz, he tried to get me to sell this land for him to the White River Lumber Company and put a price of $14.00 an acre all around on the entire tract. I was representing both of them and they advised Mr. Storthz they were not interested in the land at the price. He also sold seven thousand acres to Mengel Company at twenty dollars an acre. There is an option now on the balance of the timber at thirteen dollars an acre.

We bought seventeen hundred acres from him on the 14th day of April, and he told me that the balance was under option to Thane Lumber Company for ninety days at thirteen dollars an acre; that is, just the timber. He told me that he was going to give the land to his son to get what he could out of it for fishing and hunting privileges. I never knew of him hanging a price like thirty to fifty dollars an acre on the land.

I have never looked up the assessments of the White River Lumber Company prior to the time I was connected with the Company, but I think the land has been assessed at from four dollars to six dollars an acre.

The Storthz land lays on the river, adjoining the river. Not a very large percentage is on the river, but it is connected by a number of navigable bayous and streams. The White River Lumber Company's lands all lay in range one west, and a large part of it is within a few miles of the river, but not any more favorably located for transporting logs than the Storthz land. The entire tract would cut approximately three thousand feet per acre.

The seventeen hundred acre tract probably would cut four thousand to forty five hundred feet. The seven thousand

acre tract, which he sold to the Mengel Box Company would cut about thirty-five hundred feet to the acre.

The price of logs since 1917 has fluctuated very much.

I stated that the land sold by Porter to Dennison and Linder in 1920 was the best tract of timber I ever saw. I do not know whether the purchasers made a hundred thousand dollars on the deal or not.

The bottom land on White River is subject to overflow. There are some lands near enough to have the advantage of river navigation and still not overflow.

This Porter land lies near Esse's Bayou and the high land or second bottom, extended right up to the bank of the bayou. They had river navigation and at the same time had very little danger of overflow. They logged all winter on that tract of land in the spring of 1920 when logs were valuable.

My company has been cutting a good deal of timber from these lands in Arkansas County. Different tracts of land have cut different. We have cut land that did not cut but around 1,200 feet to the acre. We cut one tract that cut eight thousand feet. That was on the M. H. & L. Railroad, near the Mississippi River, in Desha County, near the Laconia Circle. This is the southwest quarter of section 35, 7, 1. It lays about three miles further east than the body of the White River Lumber Company's land, on high ground, and contains a large amount of cotton wood.

The company owns approximately twenty thousand, eight hundred acres in Arkansas County, sixty-five hundred acres in Phillips, twelve thousand, eight hundred acres in Desha County, and four thousand, four hundred acres in Monroe County. I did not bring a list of holding and am just giving you these acreages as nearly as I can remember them. Big Island contains about nine thousand acres. We own approximately seventy-two hundred acres.

I expect I could pick out an acre on the Island on some high gum ridge, that would produce twenty to twenty-five

thousand feet, where there was a perfect stand of gum timber; but you could not find any tract of forty acres, or of any consequence, that would average anything like that.

Mr. Brogan's estimate on the land sold by Wylie to Bush in 1924 was 5,500 feet. At that time they were operating a cooperage plant at Clarendon and used all classes of logs down as low as ten inches in diameter. They took that into consideration in making their estimate.

I do not know how many owners of timber lands there are in Arkansas County, but there would be several hundred I expect. I think practically all the valuable timber lands are owned by probably a dozen corporations and individuals who are engaged in buying and selling timber lands, or in manufacturing lumber. The lands that these smaller owners own is probably just as good as the larger tracts, but a lot of it is small tracts. I think the lands owned by small owners in Arkansas County are just as good per acre on the average as the tracts that are owned by larger concerns, but the few larger concerns do own most of the acreage. It is true that a great many of the smaller owners have lands which are absolutely valueless. We have several hundred, probably a thousand acres that are worthless and we would gladly let them forfeit for taxes if it were not for the fact that we want to keep our block intact.

I bought stock in the White River Lumber Company and paid twenty-five thousand dollars. I got one-thirtieth of two hundred and twenty thousand, six hundred, between seven and eight thousand dollars (R. 96).

REDIRECT EXAMINATION

I bought stock before the mill was built, and the company had no property except what is represented by the timber lands. I bought on the basis of $17.50 per acre value (R. 96).

"Q. You stated a while ago that it would be possible to pick an acre here and there on Big Island that might cut twenty

thousand feet to the acre. What is the highest you have cut on any tract of land of any size on Big Island?

A. On Big Island? We logged—we cut the timber on the southwest quarter of section 10, west of chute, and fractional sections 14 and 15, south of chute, township 5 south, range 1 west, containing 590.56 acres. From that we got 2,403,661 feet, which would be slightly over four thousand feet per acre. That tract of timber was cut clean, during the years 1920 to 1923, logged by Mr. J. B. Horton and S. H. Moore, and that is the particular tract of land referred to by Mr. Dennison in his deposition as the five hundred acre tract laying west of Big Island Chute. We logged section 22 and northwest quarter of section 23, township 4 south, range 1 west, 549.36 acres. We logged that in 1920; logs were cut by Mr. S. M. Winters. We got 1,604,674 feet, which is approximately three thousand feet per acre.

Q. Do those tracts represent an average of what you have been able to cut on Big Island?

A. They do (R. 97).

The two thousand acres on Big Island, not owned by the White River Lumber Company, are owned by E. A. Rolfe of Forrest City, and the Union & Planters Bank, Memphis. There is also a tract of 117 acres owned by S. B. Dennison and forty acres owned by S. M. Bush.

We have cut some other tracts on Big Island besides those I have testified to. They show about the same average (R. 98).

RECROSS EXAMINATION

I said that it would be possible to pick out an acre on Big Island which would cut twenty to twenty-five thousand feet. I did not pick out any acre. I have given you actual records of the amount of timber we cut from the land we have cut on Big Island (R. 98).

J. C. CASH, a witness for defendant, testified by deposition taken April 6, 1926, in substance as follows (R. 100).

I live in Prairie Township, Arkansas County, and have lived in Arkansas County twenty-one years. I was assessor of Arkansas County four years—1919 to 1923, inclusive.

I had charge of the assessment of lands and other property in the county with the township boards of the county.

"Q. How did you make the assessments of property in those years, just explain that method?

A. Well, I might go a little behind, probably, to before my term as assessor: Mr. Montgomery was the assessor, and these boards could come in and they established, as I understand it, the valuations of prairie and timber lands—with the timber lands. At that time in 1919, they assessed prairie lands at twelve dollars and a half an acre without improvements, and timber lands at five dollars an acre, and I adopted that plan when I was made assessor to follow Mr. Montgomery; throughout the county it was assessed that way the best—as nearly as we knew how.

Q. Now, how did you make assessments with the township boards, explain that system?

A. Well, whenever we came to any piece of land and so forth—Now, most all the parties, that is, the residents here, they met with us at our assessment places, you know and if they didn't, why, they were supposed to have—to send a representative where these boards of the township met. But they didn't always come, and we made the assessment of these lands as nearly equal on all the timber lands as we could.

Q. You were endeavoring to assess all timber lands as nearly equal as you could?

A. As nearly equal as we could, yes, sir. Now, there were some swamp lands that had but very little timbers on them that were assessed down as low as two dollars and a half an acre, and some were raised a little higher where they claimed that the timbers were better.

Q. Now, did you use the same method in making the assessment of other property in the county?

A. As nearly as I knew how and as these boards advised."

"Q. What effort, if any, did you make to get all property in the county assessed on an equal basis—that is, a uniform basis?

A. That is just as I said in the beginning, you know, that those valuations were established by these members of these boards over the county, that they made all assessments as I understood it. Well, then, in—I am not positive whether it was 19—I think it was 1921, there was one township in this county that they raised lots of these timber lands to ten dollars an acre—well, that was the Arkansas Lumber Co., and Mr. Gibson and Mr. Burnett were representatives of that company here and they made a protest. Well, you see, these—the assessors are supposed to call the county board to meet here on about the twentieth of August and I recall that they came in with their protest and there was a motion made before this board to appoint a man—they claimed—several claimed that these assessments were not right—and that they appoint a man to go over these books and to equalize all these assessments. And they appointed Mr. E. J. Spratlin and he changed a good deal of our assessments that year, but how much, I don't know.

Q. That was done under the supervision of the board?

A. Yes, sir.

Q. And that was an effort to make the assessments uniform?

A. Uniform, yes, sir; all over the county, in these timber lands, and he was supposed—he had been in the real estate business here for many years and he was supposed to know more about the values of these timber lands than any other man, and he was appointed and did go over and tried to equalize all these assessments" (R. 102).

There was no discrimination as between these timber lands and prairie lands, rice farms, etc., in the manner of as-

sessment, except as I told you in 1919 we assessed the prairie lands at $12.50 an acre and the timber lands at $5.00. That was on the theory that the prairie lands were worth considerably more than the timber lands. We assessed the raw lands at so much and totaled the amount. The timber lands were assessed the same way where there were improvements on them, but where there were no improvements on them, they went straight.

"Q. Well, is it a fact, Mr. Cash, that during your term of office, regardless of the basis of values used in making assessments, that you and your boards endeavored to assess the property of the county on as near a uniform basis as possible?

A. Yes, sir.

Q. You think you did that?

A. Did it as near as I knew how. And then a great deal of this non-resident land, which is mostly timber land, of course, there was no one there to meet us at the assess—at our assessment days, and I just entered that on the book as it was prior to my incumbency (R. 103).

Q. Do you know about what basis of valuation, that is, what percentage of actual value property was assessed at during those years?

A. I couldn't say the actual value, but not exceeding, I would suppose, thirty to thirty-three and a third valuation. Their valuation, it was supposed to be fifty per cent, but I don't think any of it was assessed above a third.

Q. That is, any of the property in the county?

A. Yes, sir; as a whole; and I think a good deal of it less than that, at the value at that time.

Q. Well, your principal efforts were to make the values uniform?

A. Uniform as a whole, yes, sir" (R. 103).

To the best of my recollection, these timber lands were assessed at $5.00 an acre in 1919. I think they were assessed probably $4.00 in 1921, on account of the 1920 slump—timber lands, prairie lands, and everything. I expect that Arkansas County is pretty near divided half and half between timber lands and other lands. There is a big lot of timber land in this county. It is my understanding that the greater portion of it is cut-over land. I have never been all up and down the river bottoms. I am told there is a good many large tracts that have virgin timber on them. Take the Melvin Jones land on the Arkansas River, they tell me there is fine timber on that. The consideration of whether the land had valuable timber or cut-over timber was left to the township boards.

I am not familiar with the lands belonging to the defendant. I have been up and down these rivers some, but I do not know the land. I could not look at timber land and tell how much timber was on it, because I am not a lumber man.

If a taxpayer came and told me that a piece of property was worth one hundred dollars and my office would find out that the property was worth one hundred dollars, we tried to put it in at $50.00. I can't say what the percentage of actual value of assessments was because I don't know. I know there was lots of this land that was contracted here when we were assessing it for $12.50 an acre that was contracted for $50.00 an acre, but lots of that land has been forfeited since. I do not think the assessments would average thirty-three and a third per cent, any of that prairie or timber land. I expect they would average about that amount.

Q. Now, Mr. Cash, you stated the boards—township boards, assessed these lands?

A. Yes, sir.

Q. Did they assess all the lands of the White River Lumber Company?

A. In their respective township" (R. 106).

Of course, it would have been impossible for me to have gone over the 18,500 acres of land. There are some few individuals that have good, valuable timbers and then some that have not. Dave and Melvin Jones have a big lot on the Arkansas River. They do not own as much as the larger lumber companies.

REDIRECT EXAMINATION

The township boards were supposed to be familiar with all of these lands, and I sat with them in making the assessments. Opinions differ very greatly as to the value of real estate, and the value in this country has fluctuated a great deal in the last six years, depending on rice conditions and timber market conditions. The resident people here usually appear before our board, and some of the non-residents, or their agents.

RECROSS-EXAMINATION

I do not think Mr. Keaton, of the White River Lumber Company, ever came to me about the assessment of the White River Lumber Company's land. I have no idea of the value of the land.

M. F. MONTGOMERY, a witness for defendant, testified by deposition taken April 6, 1926, in substance as follows (R. 108).

I live at DeWitt. I was born in Arkansas County and have lived in DeWitt ten or twelve years. Have lived in Arkansas County all of the time. I was Assessor of Arkansas County from 1915 to 1919, inclusive; four years just prior to Mr. Cash.

"Q. Mr. Montgomery, what method did you adopt for assessing the property of the county?

A. Well, we had the township board proposition; two men of the township and the assessor would constitute the board, the assessor being chairman of the board, and we would just try to classify these lands an assess them, timber lands at a certain rate, prairie lands at a certain rate, and I believe we had a little in probably two townships—we had some over-

flow land and we didn't assess that quite as much as we did the other. Now, I don't know whether that was before—when was that township board proposition—when was that? I don't believe that was but for the two last years of my office—I am not sure. I don't think we had the township board proposition the first two years I was in office.

Q. You did have it the last two years?

A. Yes, sir.

Q. In making the assessments, either yourself before the township boards were created, or working in connection with them afterwards, did you endeavor to assess all of the property of the county on a uniform basis?

A. I did.

Q. Did do that as far as you know?

A. Yes, sir.

Q. You made no effort, did you, to favor the White River Lumber Company or any other timber owner?

A. I did not.

Q. And did not favor them as far as you know?

A. I did not, no, sir" (R. 110).

CROSS-EXAMINATION

I stated that in assessing the property of the county, I assessed the timber lands as a class. We would classify the hill farms at say four or five dollars, and then classify the better class of farming country together, and group it all together. We just took the timber lands as a whole, I did not make any investigation to see what was virgin timber and see what was cut-over land. I did not know how much timber was on the land or the value of the timber. I have had no ex-

perience in estimating the amount of timber on a tract of land. If I had evidence that any of this land was worth seventy or sixty-five dollars an acre I would have raised the assessment.

"Q. Did you have any evidence produced before you of the value of the land at all?

A. Nothing more than just what the township board would give at that time, and I am not sure now as to the date, but I think the first two years we used to have the old system of the county board.

Q. Mr. Buzbee: Board of Equalization.

A. Board of Equalization, which would meet here; after the assessor would make his rounds over the county, then they would go over the whole book, just three men from different parts of the county would go over the whole thing" (R.111).

It would hardly have been possible for members of the township boards to have inspected all of these thousands of acres of timber lands personally. When we made the assessments, I relied on the men in the township for this information, because a man over in the eastern part of the county would know more about that proposition than I would, living here. I do not know whether I have ever seen these lands of the White River Lumber Comp[illegible], or not.

REDIRECT EXAMINATION

"Q. You followed that same method, did you not, Mr. Montgomery, in assessing farm lands?

A. Yes, sir.

Q. You didn't undertake to inspect each farm, did you?

A. Couldn't have done it; only had three months to make the assessment in.

Q. You did have on the township boards men who were familiar with the property in their different sections?

A. Men appointed by the county court.

Q. Did you classify the farm lands somewhat along the same lines?

A. Yes, sir.

Q. And cattle and horses and stock of that kind?

A. Had a uniform rate for that, you know. Of course, beef cattle, I would assess those more than the others, but just taking a common herd of cattle, just assessed them so much a head.

Q. You didn't undertake to inspect each cow?

A. Couldn't do it.

Q. Or calf?

A. No, sir.

Q. So that the method you followed in assessing the timber lands was exactly the method you followed in assessing all of the property of the county?

A. Yes, sir—all other personal property, yes, sir, as well.

Q. And in doing that you endeavored, as far as possible, to make these assessments on a uniform basis as concerned values?

A. I did.

Q. You had all the information before you, didn't you, that the township boards had about the property in the various townships?

A. Yes, sir'' (R. 112).

RECROSS EXAMINATION

We valued rice farms more than timber land because they would produce more. A tract of land that had five or six thousand feet of merchantable timber to the acre could be worth more than a rice farm. I raised timber lands and farm lands whenever there was sufficient proof brought to bear.

I received a certificate from the railroad or tax commission stating that property should be assessed at fifty per cent.

"Q. Now, if you were given a piece of town or country property and were told that property was worth the reasonable and fair cash value of fifty thousand dollars, what would you have assessed that property at?

A. I would have wanted to assess it at half value, but there is none of them that assessed their property at that value, I am satisfied. While they were supposed to do that, but few did do it" (R. 55).

I could not say whether the majority of the large tracts of timber lands are owned by just a few parties or not.

REDIRECT EXAMINATION

"Q. Isn't it true, Mr. Montgomery, that the assessing boards, the township boards, would not assess property at fifty per cent of its actual value?

A. Yes, sir.

Q. When you stated that if you had been—if the parties had come in and told you that the property was worth fifty thousand dollars you would have tried to assess it at twenty-five thousand dollars, you would have been controlled then by the action of the township board, wouldn't you?

A. I would have had to, because there was two of them and I was only one and it takes a majority to rule.

Q. It is your opinion, as you stated, I believe, that property hasn't at any time been assessed at an average of fifty per cent of its value?

A. I don't think it has, Mr. Buzbee.

Q. Mr. Rose: What per cent has it been assessed at Mr. Montgomery?

A. Well, I—I don't know whether it would average a third or not, Mr. Rose, I am not sure; I never figured it out.

Q. Mr. Rose: But you would have assessed it at fifty per cent if you knew—

A. I would try.

Q. Mr. Rose: What was your answer?

A. I would have tried to, yes, sir" (R. 115).

A. N. BEST, a witness for plaintiff, testified by deposition taken May 6, 1926, in substance as follows (R. 117):

I live in the southern part of Arkansas County, Chester township. I am in the stock business; a little farming, justice of the peace, school director, president of the school board, etc. I am a member of the township board for Chester Township. I have been a member of the board about six or seven years at least. I sat on the board when it assessed the timber lands of the White River Lumber Company in Arkansas County. The land was assessed at $4.00 an acre.

We did not have time to go over the land and view it, and we just assessed it about like the other. We assessed the virgin and the cut-over lands all the same. We assessed property in Arkansas County for those years from about thirty to fifty per cent valuation. If we had been told or had sufficient evidence that the value of those lands, or any other lands, was $60.00 an acre, we would have assessed them at about thirty.

CROSS-EXAMINATION

I only sat in the assessment of lands in that township. I have lived there 25 years, or more, and am pretty familiar with that section of the country, but I lived on the prairie, and the timber land, most of it, is on the White River and Arkansas.

I own land down there I haven't seen for 15 years. It is timber land. I have got a boy about 23 years old, and he looks after it for me. I do not recollect exactly how much it was assessed for, but I do not think it was over $4.00 an acre. We assessed White River Lumber Company lands on the same basis that we assessed other property in the township. "I looked at it this way—I didn't know that some had been cut-over—didn't know whose it was, just done what was just." I did not undertake to favor the White River Lumber Company. We tried to discharge our duty and assess all property in the township on about the same basis. I didn't undertake to make a critical examination of all of the property I assessed. "We did what we thought was right."

The township is about six miles square. I am familiar with the prairie lands, all of it. We have a right smart prairie lands in that township I am not familiar with the bottom lands. I have a general knowledge of the kind of land and the timber that grows there. I mean that I never cruised and ran out the lines.

REDIRECT EXAMINATION

My lands assessed at $4.00 an acre are worth about $8.00. If the land of the White River Lumber Company was worth $60.00 or $75.00 an acre, that would not be a uniform assessment with my land. I have a Ford automobile that I paid $505.00 for. It is assessed for $250.00.

I do not know now the value of the timber lands of the White River Lumber Company. If I had inspected the lands, I could not have estimated the number of thousand feet to the acre.

Most of my timber lands has been cut-over. I have eighty acres in one spot and 160 acres in one spot. Part of it was cut seven years ago, and part of it as late as five years ago. The other member of the township board was born in the township. So was his mother.

F. E. STEPHENSON, a witness for the plaintiff, testified by deposition taken April 6, 1926, in substance as follows (R. 123):

I live at St. Charles, Arkansas County, and have lived there, or in Prairie Township, all my life. I lived in the lower end of the township up until about six years ago. I have been Assessor of Arkansas County since 1922; this is my fourth year.

I assessed the property of the White River Lumber Company in 1923 and 1925. I assessed real estate every other year.

Q. "Now, what was your manner of assessing?

A. 1923 it was—it had all been assessed, and you know the tax book—or, the assessment book is made out, the old value is there, so the assessing board—Mr. Dupre over there was one of the board, and some of the others that had been on the boards with the former assessor, Mr. Montgomery, told me that they had taken four dollars as a basis for timber lands and ten dollars for prairie lands; so they said they thought that was a fair value and was the basis that they had taken, and unless we knew something different, some cause for it being decreased or increased, we left it at the old value.

Q. What did you do as to this land of the White River Lumber Company?

A. I placed it back just about like it was; there might have been some few changes. Mr. Keaton told me that they were satisfied with it and thought it was about right" (R. 124).

Mr. Keaton is manager for the White River Lumber Company, and the assessor of the board also told me the same thing. I did not make an inspection of the timber lands. I have been in the bottoms some, and I might have been on some of the land, but I would not have known whether it was the White River Lumber Company's or others. I do not know how to estimate standing timber. The Railroad Commission sent a certificate to me requiring that property be assessed at fifty per cent.

"Q. And what has been your method in assessing?

A. Well, I have assessed, and I might think at the time I was assessing I would get about fifty per cent, but some time later I would find out I was wrong. But where I absolutely knew anything of it I have tried to go on the fifty per cent basis. But some will tell you that they think its only about twenty-five, some thirty-three and a third per cent.

Q. And you have endeavored to get fifty per cent then, where you knew the value?

A. Where I absolutely knew it, yes, sir.

Q. In other words, if you were given a piece of property in the town of DeWitt or in the town of Stuttgart, or a piece of farm land, and you were told that property was worth fifty thousand dollars, the fair cash value, what would you assess that land at?

A. Well, to allow for depreciation and everything, if it was fifty thousand dollars, why, I believe that about one-third would be near about what it would be, of the first value, the fifty thousand dollars.

Q. Well, I mean of the present value. Then, if you were given a present value, after allowing depreciation—

A. And at fifty thousand dollars?

Q. At fifty thousand dollars at this time.

A. Well, I would assess it somewhere about twenty or twenty-five thousand dollars.

Q. The average assessment over the county, what is the average assessment?

A. Well, I would think about thirty-three and a third.

Q. Some goes higher and some lower, does it?

A. Yes, sir; some times.

Q. And the average would be?

A. Something like that, yes, sir" (R. 126).

I think the White River Lumber Company, Mr. Storthz and Anderson-Tully Lumber Company, a company that owns the land up and down Bayou Meto, and the Wrape Lumber Company are about the biggest owners of timber lands.

"Q. Then this timber land has just been assessed as a class, as I understand you to say?

A. Yes, sir; all about the same—with one exception; there is some land up in here on Bayou Meto that belongs to this company that I just spoke of—

Q. What company?

A. Long Bell, used to be—it seems that they have sold that, but it was the Long Bell Lumber Company, and we raised that to ten dollars an acre this last year from, I think, six, because there is none of the timber been cut off of it they say up there, and I notified them of the raise and they didn't kick on it; they sent me a list of their land and what it had been assessed at, and I just put opposite that what it was raised to" (R. 127).

I do not know how much of the White River Lumber Company lands have been cut. I know there has been a whole lot of it, because they have been cutting over there for five or six years.

I made my assessments in connection with the township boards. They are composed of citizens from each township. One of the boards has been there ever since I can remember. One had been there for some ten or fifteen years. I doubt if they had been on the lands. They might have been, I cannot say about that. This last year, one of the same men helped me that helped the first year, and I had another man that has been there for ten or fifteen years on the board. We followed the same system all over the county in working with the township assessing boards. When they started out with the township boards, it seems that they had all established as a basis $4.00 for timber lands, and ten dollars for prairie lands, and we used about the same basis like we did on cattle or stock of that kind. Whenever we found occasion to make changes, we made them.

"Q. Did you and the boards make an effort, was it your purpose to assess all property in the county on about the same basis?

A. Yes, sir.

Q. You did that as far as you know?

A. As near as I could. Sometimes you will strike a township board, like on the valuation of stock or anything, some boards will just want to put it some lower and higher; and you can tell them, but they have the right to change the list, you know, after a man makes his assessment, and sometimes they lowered the assessment after a man assessed, sometimes they would raise it.

Q. Nearly all of the timber lands along White River are overflow lands, aren't they?

A. Yes, sir; practically all of them.

Q. They are not fit for cultivation?

A. No, sir" (R. 128).

I hardly think it would have been possible for all of the members of the township boards to cover all of these timber lands. At the time I was doing what I thought must be about right. I followed the method of the former assessor. If I had had convincing evidence produced to show timber land was worth sixty-five dollars an acre, I would have raised that assessment. I did not have any such evidence. I had what was told by others. "Some would tell you it ought to be so and so, and some tell you it was enough." I talked to Mr. Keaton about it.

We had heard that it had been assessed at more than that in Monroe County, so I sent Mr. Keaton word about it. He called me up over the phone, I talked to him about it, and he said he thought that was a fair value, four dollars an acre.

In making the assessments, I would have the book and the board would be around and we would just agree on a certain price, and, of course, I saw the figures down on all of it.

"Q. Now, some of it the township board didn't appraise, did they?

A. Well, now, take like the White River Lumber Company, it would take so long if you took every separate tract, and they just agreed on an average of four dollars an acre, so I just extended the figures out—figured it out about that way, some may be a little less, where you strike a place that you know is swampy and nothing on it—it wouldn't be right to assess it at that—some may be possibly a little more. But four dollars was the basis" (R. 130).

"Q. You had, I believe you stated, Mr. Stephenson, the help of the township boards, and then you also stated, as I understood, that people would tell you different things about it; that is, you talked with different people about valuations?

A. Well, I just heard them talking about it. Probably after I was through they would discuss it. Since this has come up, you know, I have heard different ones talk about it, but I still wouldn't know how to take it, because some will tell you one thing and some another.

Q. Well, that is nearly always true as to the valuation of property, isn't it?

A. Yes, sir" (R. 130).

REDIRECT EXAMINATION

I made no investigation except taking the figures of the former assessor and talking to Mr. Keaton and with the township boards.

Now, wait a minute. I did write the assessor—I started to tell you that while ago—when I heard what it had been assessed in Monroe County, I wrote the Assessor of Monroe County about this. That is what we agreed on, the township board and myself, in regard to this land, that I would write to him about it and if it had been assessed up that high we would raise it, because we didn't—

"Q. Up how high?

A. To seventeen dollars and a half an acre; that is what we had heard—just hearsay. So I wrote to the Assessor of Monroe County and I didn't hear from him for a long time, and finally I got a letter from him—after I had talked to you, you know—and I think I have the letter at home—and I believe he said about five dollars an acre was what they had it" (R. 131).

He did not say whether it was virgin timber or not. I do not know that they raised the virgin timber to $17.50 last year.

S. B. DENNISON, a witness for plaintiff, testified by deposition taken September 24, 1926, in substance as follows (R. 133):

I was on Big Island two days of this week. I have been there lots of times. There are some lands in Arkansas County not as good as the White River Lumber Company's lands, and some as good as theirs is, but there are no large tracts in Arkansas County, that I ever saw that was as good as the White River Lumber Company's. There are timber lands on the west side of Bayou Meto that I never was on, but I have been on practically all of the timber lands there in the White River bottoms. There are no small owners any more that I know anything about. The cut-over timber lands owned by the small owners haven't got much value.

I think virgin land in large tracts is more valuable than the small tracts. More of it is in a body and can be handled easier. You could interest more people in a large tract than in a small tract.

We cut the timber off the Porter land and it cut about six thousand feet per acre. The White River Lumber Company's lands adjoins it on the east in several places, and they had land laying east and north, and it had fine timber—a great deal better than the Porter land. It would be as good as that timber land in that neighborhood. Big Island is better. It is the best tract in that whole country.

All of the timber lands overflow. I have been over the Storthz land. A good many years ago, before Mr. Storthz owned it, the Weber-Farrell people owned it and put in a mill. They cut over a lot of this land and they left a great many logs, I think three or four million feet, that rotted. All that was practically cut over a good many years ago. That was not very valuable. It did not have any timber on it. Thousands of acres never had any timber. That is a way down the river and in that low flat country there is not any timber. Mr. Storthz had some land that had good timber on it, but I am speaking of this that sold the other day to the Thane Lumber Company. I don't think that down there is worth anything like a fourth of the Big Island tract at the time it sold. I don't think the land sold by Wylie to Bush is a better tract of land than the White River Lumber Company's entire tract, but it is a good tract of timbered land, and lays in the same vicinity and adjoins in several places the White River Lum-

ber Company's land. They (Wylie and Bush) had only a small piece on Big Island. They cut about 330,000 feet approximately off of the forty-five acres on Big Island. I think the White River Lumber Company's land is more valuable than the Wylie tract. It is easy to log. You have got the river on one side and the chute on the other and you can haul it for less money than the other.

I do not know of any value on cut-over timber lands in Arkansas County. A bank at Memphis owned a 2,800 acre tract and telephoned me that they had an offer of $3.00 an acre, and asked my advice about selling it at that price. I advised them not to take it. If the bank was able to hold it it might be worth more money sometime later, but I would not give three dollars an acre for any cut-over land myself.

The land that the White River Lumber Company cut on Big Island, was good timber, but I do not think they cut very far back, because the water was up.

CROSS-EXAMINATION

I did not keep any account of the land and timber cuttings and transactions of the White River Lumber Company. The only thing I know is just passing by where they are operating and having land adjoining. I have never been connected with them nor had charge of their lands in any way. I have done some work for Mr. Storthz. In speaking of the Storthz land a while ago, I was referring to the piece I understand had recently been sold. I understand that involved about 13,000 acres.

"Q. Hasn't the White River Lumber Company a lot of land that has been cut-over?

A. Yes, lots of it.

Q. That cut-over land of theirs is not worth any more than other cut-over land, is it?

A. No, sir.

Q. All of that timber land is practically worthless after the timber is gone?

A. Yes, sir.

Q. So there is no value connected with it except the value of the timber?

A. That's all; yes, sir'' (R. 143).

E. A. Rolfe owns six or seven hundred acres on Big Island, and the Southwestern Veneer Company owns close to a hundred acres. The Rolfe land was good land before the timber was cut. I helped to log that, and measure the logs that came off of that. They cut eight or nine thousand feet. That was in 1918 or 1919. Rolfe is an individual.

REDIRECT EXAMINATION

''Q. Mr. Buzbee asked you if a great many of the lands of the White River Lumber Company were not cut-over lands and you answered that they were. Were your estimates in your former deposition and your estimates today based on the good lands alone, or did they take into consideration the good and bad?

A. Well, I meant the lands not cut-over. I wouldn't want to buy any—they cut their lands pretty clean where I have seen.

Q. Now, when were those lands cut over?

A. They begin operating down there, I think, along in 1919 or 1920; may be latter part of 1918, but some time then; from 1918 to 1920.

Q. Well, your estimates of value—isn't it a fact that most of the timber lands in the county are partly cut-over?

A. Yes, sir. Now, they—it's been cut over on the river and in the bottom, for the last five or six years.

Q. The figure you put on the White River Lumber Company's land on Big Island—did you mean to say that you would give sixty-five dollars an acre, or get a purchaser at that figure, for the entire tract?

A. For what hadn't been cut over.

Q. And how much has been cut over?

A. I don't know. I don't remember but two or three hundred acres cut; but I don't know.

Q. How about the land outside—off of Big Island? Your figures you have given in your former deposition—did you take those lands as a whole? You didn't take simply one good acre and include—

A. Only that the timber was on, didn't I? I don't remember. Most all of their land south of Big—my recollection is that nearly all the lands south of Big Island has been cut in Arkansas County.

Q. What figure did you put as the value of the other lands, outside of Big Island, of the White River Lumber Company?

A. I think, before they were cut, at thirty dollars an acre.

Q. And you would want to deduct the value of the logs taken since 1919 on that basis?

A. Yes, sir. I wouldn't say it was worth that now; cut over. I would say it was practically worthless now (R. 145).

RECROSS EXAMINATION

"Q. The White River Lumber Company has had lots of timber stolen in Desha and Phillips Counties?

A. Mr. Buzbee, there's millions of feet of timber stolen all over the lower end there, up to the foot of Big Island. I

expect the White River Lumber Company has suffered the loss of millions of feet of timber from timber thieves. I wouldn't say Perry Martin did it, but it—

Q. If any timber was cut off the land it was damaged that much?

A. Yes, sir.

Q. When that timber was cut off, whether by timber thieves or anyone else, the land became practically worthless?

A. When it was cut clean; yes, sir. They only cut timber that would float—ash, cypress and cotton wood—none of that grew up in St. Charles in any large quantities. On the lower end there was lots of cotton wood, cypress and ash. I think in recent years they have got so they can float gum and maybe oak.

Q. You don't pretend to say accurately, do you, what lands of the White River Lumber Company have been cut?

A. I don't say the sections. I know they have cut a great deal in Arkansas and Monroe, and some in Phillips County" (R. 147).

REDIRECT EXAMINATION

There has been a lot of timber stolen on the lower end of White River. I think everything that was worth much that would float was stolen from way down. That has been twelve or fifteen years ago. I don't think any has ever been stolen from Big Island. There might have been a few trees ever now and then, probably some ash and cypress.

"Q. What proportion of the county has timber been stolen from?

A. Most of it down on Lagrue; it—

Q. What proportion of it—what per cent?

A. I expect about forty per cent's been stolen in Arkansas County" (R. 148).

W. W. KEATON, a witness for defendant, being recalled, testified by deposition given November 29, 1926, in substance as follows (R. 149):

I have examined the map of Arkansas County, made by F. M. Quartermous. The map is approximately correct, and the shadings show with approximate correctness the different characters of land. I have, also, examined the stipulation entered into by the parties to this suit and marked "No. 1." The conveyances shown in said stipulation have been numbered and lettered in red ink, and the map referred to has been numbered in red pencil. The numbers on the map approximately represent the location of the lands described by the conveyances referred to in said stipulation.

The blue marks on the map correctly indicate the lands purchased by me from L. Storthz for about $13.00 per acre. The legend on the map correctly indicates on the map the lands there described.

The lettering on the map shows with approximate correctness, the lands of the White River Lumber Company and of Storthz, in Arkansas County.

"Q Mr. Keaton, are all of the lands of the White River Lumber Company well timbered and valuable for timber purposes, or are any of the lands without timber?

A. Much of the land is without timber. There are several thousand acres—I won't say several thousand acres—there's a very large acreage of their land that is—that consists of lakes, bayous and other open water streams, which are not deducted in figuring the acreage. The government survey only deducts acreage from navigable streams. There's one lake near the mouth of Lagrue that contains more than a half section in one body. There is another—that is Goose Lake. There is another lake on the upper end—near the upper end of Scrub Grass Bayou, called Alligator Lake, and also Yonker

Pin Lake and Prairie Lake. Each of those lakes contain several hundred acres, not shown—not deducted from the acreage in the government survey—government plats.

Q. Is there any of the land which is not in water but which has no merchantable timber?

A. There is a large amount of the land that doesn't have any timber—any merchantable timber on it. I could not say the exact, I wouldn't try to say the exact amount I think wouldn't have any timber on it.

Q. Has it ever had any timber on it, or since the White River Company has owned it?

A. Never has.

Q. Has the White River Company lost much timber by depredations of trespassers?

A. They have suffered very heavily on the land that's near the river—near the streams. Most of the ash and cypress has been taken from the lands, and other kinds of timber that would float, with the exception of gum.

Q. You mean that has been taken by trespassers, without the consent of the White River Lumber Company?

A. Yes, sir (R. 151).

(The map referred to was introduced in evidence and by agreement made an original exhibit in this court.

The timber cut by the White River Lumber Company, as shown by answers to interrogatories, has been cut from different parts of the land, some on the extreme upper end and some on the extreme lower end. There has been a large amount cut from Big Island. I wouldn't like to say how much without having my records. We have cut from approximately a thousand acres on Big Island. What we have cut, we have cut clean.

We submit, for convenience of the court, a recapitulation of assessment statistics shown by the testimony:

Considerations and Assessments Property Covered by Conveyances Testimony of S. B. Dennison.

		Percentage of Assessment
Exhibit A (R. 60). W. P. Porter to S. B. Dennison, et al., Jan. 31, 1920, Consideration (2,856 acres; $25.00 an acre)	$71,402.65	
Assessment (R. 184)	11,440.00	16% +
Exhibit B (R. 63). L. Storthz to Dennison, December 22, 1922, Consideration (1,700 acres)	$51,000.00	
Assessment (R. 192)	6,720.00	13% +
Exhibit C (R. 66). Wylie to Bush, January 15, 1924, Consideration (558.06 acres)	$25,067.70	
Assessment (R. 198)	2,240.00	8% +

RECAPITULATION OF ASSESSMENT LISTS FILED

Defendant's List (350 Transfers) (R 162): Considerations	$3,068,851.64	
Assessed Value	615,106.20	20% +
Plaintiff's List (240 Transfers) (R. 203): Considerations	534,586.27	
Assessed Value	274,315.20	51% +
Combined List (Excluding Duplicate Conveyances): Considerations	3,410,702.93	
Assessed Value	806,651.40	23% +
Combined List (Excluding Duplicate Conveyances, Quitclaims & Special Warranty Deeds): Considerations	3,363,412.93	
Assessed Value	762,211.40	22% +

In the

United States Supreme Court

OCTOBER TERM, 1897.

Waco Horse Lubricant Company, Appellant,

v. No. 181.

Board of Assessors, &c. et al., H. W. Ammunition, &c. Company, Appellees.

PETITION FOR REHEARING.

Geo. R. Peck,
H. T. Hamilton,
A. A. Bowen,
Thos. E. Bowen,
Attorneys for Appellees.

Supreme Court of the United States.

Memorandum.

191 ....., 19

Rehearing.

It seems that the
Pr is right & that
the Ct ought to have
passed on the validity
as applied in the
Concrete figure.

SUPREME COURT OF THE UNITED STATES.

No. 101.—October Term, 1928.

White River Lumber Company, Plaintiff in Error, *vs.* The State of Arkansas *ex rel.* H. W. Applegate, Attorney General.	In Error to the Supreme Court of the State of Arkansas.

[May 27, 1929.]

Mr. Justice Sanford delivered the opinion of the Court.

This case involves a question as to the constitutional validity of the back tax law of Arkansas. Sec. 1 of Act No. 169 of the Arkansas Acts of 1913—which is set forth in the margin[1]—provides that where, because of any inadequate or insufficient valuation or assessment, or undervaluation, of any property which belonged to any corporation at the time taxes thereon should have been properly assessed and paid, there are overdue and unpaid taxes thereon

[1]This section amended § 1 of Act No. 354 of the Acts of 1911, so as to read: "Where the Attorney General is satisfied from his own investigations, or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid; that it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated . . . ." C. & M. Digest, § 10204. It was also provided by an earlier act that the State and its political subdivisions should have a lien on the property for the payment of such overdue taxes, to be enforced by this suit. C. & M. Digest, § 10207.

owing to the State or a political subdivision thereof by any corporation, the Attorney General shall institute a suit in chancery in the name of the State for the collection thereof.

In July, 1925, the State of Arkansas, proceeding under this section, brought suit in a chancery court, on the relation of the Attorney General, against the White River Lumber Company, a foreign corporation doing business in the State, for the recovery of back taxes. The complaint, as amended, alleged that the Company owned large tracts of valuable timber lands in four counties of the State,[1] which were worth from $30 to $50 an acre but had been undervalued and underassessed for taxation for the years 1915 to 1926, inclusive, at a valuation of about $4 per acre; and prayed judgment for overdue and unpaid taxes for those years at 50 per cent of their true value—the basis of valuation that had been fixed by an order of the State Tax Commission—less the assessments actually made. The Company, answering, denied that there had been any undervaluation; claimed that the lands had been valued on the same basis as like timber lands owned by other individuals and corporations; and alleged that section 1 of the law as attempted to be enforced against it, was repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

The chancery court—finding that for the years in question the value of the lands constituting the "Big Island group,"[2] was $50 an acre, and that of the remaining lands $33.33 an acre, and that the average assessments of other lands in these counties had been at approximately 30 per cent of their value—back assessed the Big Island group at $15 per acre, and the other lands at $10 per acre, less credits for timber stolen and sold and the valuations at which they had been originally assessed, and, declared a lien on the several tracts for the amount of the back taxes due on them, respectively, as thus reassessed.

Upon cross appeals the Supreme Court held that the fact that the statute authorizing suits for back taxes applied only to corporations, did not render it repugnant to the Fourteenth Amendment; that under it the State might maintain suit to recover additional taxes on the ground that there had been an inadequate or insufficient valuation or assessment of the corporate property; that in such case the reassessment should be on the same

[1] These contained 41,500 acres.

[2] These contained 7,964 acres.

basis as that upon which the original and inadequate assessment should have been made; and that as it appeared that all other property was assessed at an average of 30 per cent of its value, the Company's lands, under the uniformity clause of the State Constitution, should be assessed at that per cent, despite the fact that the State Commission had fixed a higher basis. Applying these rules of law the court found from the testimony that it was not shown that there had been any inadequate or insufficient valuation of any of the lands except the Big Island group, but that this group was a body of lands that were unusually well timbered, had a value not possessed by the other timbered lands which were assessed at from $4 to $5 per acre, and "were of an average value, during the entire time covered by the assessments in question, of $40 per acre, taking into account the timber stolen and the timber sold". And holding that they should be assessed at a valuation of 30 per cent of that amount, that is, $12 per acre, less the valuation on which the taxes had been paid, the decree of the chancery court was modified so as to permit a recovery of back taxes on the Big Island group only, and on those lands only to the extent indicated. 175 Ark. 956.

1. It is urged here that the back tax act of Arkansas, in providing for the reassessment of property of corporations by judicial proceedings and the imposition of additional taxes thereon after the payment of the taxes assessed by the duly constituted assessing authorities, and in not providing for such reassessment of property belonging to natural persons, denies to the Company and other corporations the equal protection of the laws in violation of the Fourteenth Amendment.

We cannot sustain this contention. It is unquestioned that the Arkansas statutes providing for the original assessment of property for taxation make no distinction between the lands of corporations and those of natural persons and that it is the duty of the assessing officers to assess them in like manner, according to their value. And the question now presented is merely whether a statute authorizing the collection of back taxes on lands which have escaped their just burden of taxation, is invalid because it is limited to the recovery of additional taxes on the lands of corporations which have been assessed at an inadequate or insufficient valuation, and does not extend to the recovery of such ad-

ditional taxes on the lands of natural persons, which may likewise have been assessed at an inadequate or insufficient valuation. The decision in *Quaker City Cab Co.* v. *Penna.*, 277 U. S. 389, on which the Company chiefly relies, involved merely a question as to the invalidity of the discrimination made by a statute levying an original tax on the gross receipts derived by corporations from their operation of taxicabs. As there was no question whatever as to back taxes and no back tax act was involved, the decision is not controlling in the present case.

In *Whitney* v. *California*, 274 U. S. 357, 370, we said—citing various cases—that: "A statute does not violate the equal protection clause merely because it is not all-embracing. . . . A State may properly direct its legislation against what it deems an existing evil without covering the whole field of possible abuses. . . . The statute must be presumed to be aimed at an evil where experience shows it to be most felt, and to be deemed by the legislature coextensive with the practical need; and is not to be overthrown merely because other instances may be suggested to which also it might have been applied; that being a matter for the legislature to determine unless the case is very clear. . . . It is not open to objection unless the classification is so lacking in any adequate or reasonable basis as to preclude the assumption that it was made in the exercise of the legislative judgment and discretion." These and like principles have been applied by this Court in four cases dealing directly with classifications made in back tax statutes and similar legislation.

In *Wisconsin & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526, 539, in which it was held that a state statute providing for the collection of back taxes on real property without including a like provision for collecting back taxes on personal property, should be sustained, the Court said: "The case is different from that of an ordinary tax law in which there may be some foundation for the claim that the legislature is expected to make no discrimination. . . . For this statute rests on the assumption that, generally speaking, all property subject to taxation has been reached and aims only to provide for those accidents which may happen under any system of taxation, in consequence of which here and there some item of property has escaped its proper burden; and it may well be that the legislature in view of the probabilities of changes in the title or situs

of personal property might deem it unwise to attempt to charge it with back taxes, while at the same time, by reason of the stationary character of real estate, it might elect to proceed against that. At any rate, if it did so it would violate no provision of the Federal Constitution. . . ."

In *New York State* v. *Barker*, 179 U. S. 279, 285, a general state statute imposed a tax on the real estate of individuals and corporations upon its full and true value as found by the assessors. In the case of individuals no resort was permitted to any other proceeding by which the tax could be increased by any subsequent assessment on the difference between the assessed and the actual value. But in the case of corporations, if real estate should be mistakenly assessed at an undervaluation another statute afforded an opportunity to reach the difference between the assessed and actual value by making an assessment upon the actual value of the corporate capital, including the real estate. The only claim was that "in this opportunity to correct a mistaken assessment upon its real estate in the case of a corporation when assessed upon its capital, which does not exist in the case of an individual, the corporation is denied the equal protection of the laws." In overruling this contention the court said: "The mere fact that the law gives the assessors in the case of corporations two chances to arrive at a correct valuation of their real estate, when they have but one in the case of individuals, cannot be held to be a denial to the corporations of the equal protection of the laws, so long as the real estate of the individual is, in fact, generally assessed at its full value."

In *Florida Central, &c. R'd Co.* v. *Reynolds*, 183 U. S. 471, 480, in which it was held that in so far as the Federal Constitution was concerned the legislature had the power to compel the collection of delinquent taxes from railroad companies for certain years, even though it made no provision for the collection of delinquent taxes for those years on other property, the Court, quoting with approval from the *Winona Land Co.* case, said: "If the State, as has been seen, has the power, in the first instance, to classify property for taxation, it has the same right of classification as to property which in past years has escaped taxation. We must assume that the legislature acts according to its judgment for the best interests of the State. A wrong intent can not be imputed to it. It may

have found that the railroad delinquent tax was large, and the delinquent tax on other property was small and not worth the trouble of special provision therefor. If taxes are to be regarded as mere debts, then the effort of the State to collect from one debtor is not prejudiced by its failure to make like effort to collect from another. And if regarded in the truer light as a contribution to the support of government, then it does not lie in the mouth of one called upon to make his contribution to complain that some other person has not been coerced into a like contribution."

In *Ft. Smith Lumber Co.* v. *Arkansas*, 251 U. S. 532, 534, the State, proceeding under the statute here involved, had brought suit against a corporation to recover back taxes alleged to be due upon a proper valuation of its capital stock by reason of the fact that in assessing its value there had been omitted the value of stock owned by the corporation in two other corporations, each of which had paid full taxes. The corporation defended "on the ground that individuals are not taxed for such stock or subject to suit for back taxes, and that the taxation is double, setting up the Fourteenth Amendment." This Court, in overruling the defense "with regard to confining the recovery of back taxes to those due from corporations," said: "It is to be presumed, until the contrary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the State. See *New York* v. *Barker*, 179 U. S. 279, 283."

We see no ground for distinguishing the *Ft. Smith Lumber Co.* case from that now under consideration, and on that authority and for the reasons stated therein and in the earlier cases which we have cited, hold that the back tax statute of Arkansas, although confined to the property of corporations, does not deny to them the equal protection of the laws in violation of the Fourteenth Amendment.

2. It is also urged in behalf of the Company, that even if the back tax statute be valid on its face, it was so applied by the Supreme Court of the State in the present case, by selecting thirty-four tracts of land, constituting the Big Island group, and reassessing the same on the basis of their average value for twelve years on an average basis of assessment instead of assessing them in accordance with the Arkansas statutes according to the actual valu

of each separate tract for each separate year on the actual basis of assessment for that year, as to constitute a denial of the equal protection of the laws. It does not appear, however, from the record that this constitutional question was presented in or passed upon by the Supreme Court of the State; and as it was sought to raise this question for the first time by assignments of error in this Court, it is necessarily excluded from our consideration. *Whitney v. California, supra,* 316; and cases therein cited.

3. No other federal question is presented by the record for our consideration. The decree is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 101.—October Term, 1928.

White River Lumber Company, Plaintiff in Error, vs. The State of Arkansas *ex rel.* H. W. Applegate, Attorney General.	In Error to the Supreme Court of the State of Arkansas.

[May 27, 1929.]

Mr. Justice Butler, dissenting.

Plaintiff in error attacks a provision of an Arkansas statute,* on the ground that it is repugnant to the equal protection clause of the Fourteenth Amendment.

It directs that, where because of undervaluation there are overdue and unpaid taxes upon any property which belonged to a corporation at the time such taxes should have been assessed and

*The original Act was passed in 1887. Laws 1887, p. 33. There was an amendment in 1911, which is not material here. Laws 1911, p. 324. It was again amended in 1913. Laws 1913, p. 724. (The words added by the last amendment are italicized, and those omitted by it are included in brackets.)

"Where the Attorney General is satisfied from his own investigation or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, *or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof*, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation, [or] upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes, or any corporation [or person] claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant. . . ." § 10204 Crawford & Moses' Digest.

paid, the Attorney General shall bring a suit to collect them unless the title passes to an individual before suit. No law of the State creates or permits the enforcement of any like or similar liability against the property of individuals. The fact that the property is owned by a corporation is the sole basis of the classification. The claim here is for additional taxes upon land, and the land alone is liable. The owner cannot be held for either the original or back taxes. See decision below, 175 Ark. 956, 973. Like lands of individuals are shown to have been grossly underassessed. And if such lands were owned by corporations, they would be liable for back taxes.

The discrimination is deliberate. The statute, passed in 1887, is entitled "An Act to provide for the collection of overdue taxes from corporations doing business in this State". It was amended in 1913. In *State ex rel. Attorney General* v. *K. C. & M. Ry. and Bridge Co.*, 117 Ark. 606, the court said (p. 613): "The object of the amendatory act of 1913 was to give a complete remedy for the recovery of back taxes due by a corporation upon any property then in the State, which belonged to any corporation at the time such taxes should have been properly assessed and paid. It takes away the right conferred by the original act to proceed against property where the title had passed to an individual, although it had been owned by a corporation when the assessment was made and the taxes were payable . . .". And see concurring opinion, *State ex rel. Attorney General* v. *Bodcaw Lumber Co.*, 128 Ark. 505, 523.

This suit was brought in 1925; its original purpose was to recover from plaintiff in error additional taxes, for each of the 10 years ending with 1924, on the value of the company's "capital stock or intangible property". The complaint stated that plaintiff in error had paid taxes upon its real and personal property. It alleged that the assessed value of its tangible property "upon which defendant had actually paid taxes as provided by statute" was much less than the market value of its capital stock, and judgment was demanded against plaintiff in error for back taxes on such intangibles.

But it was found that the company had no property in Arkansas other than real estate, and about the same time the state supreme court, in *State* v. *Lyon Oil and Refining Co.*, [1926] 171

Ark. 209, held that the capital stock of a foreign corporation which is neither located nor used within the State cannot be taxed therein.

Then the complaint was amended to allege that the company owned timber lands in Arkansas which had been underassessed in each of the 12 years ending with 1926. The chancery court charged the lands with back taxes. The supreme court held that there had been undervaluation of only a part of the company's lands and that the amount of back taxes imposed by the decree should be reduced accordingly.

Such taxes are imposed upon the sole ground that through mistake the original assessments were too low. The procedure for the enforcement of taxes on land is not affected by the character of the owner; the State looks only to the land. Lands of individuals are as likely to be erroneously undervalued as are those belonging to corporations. But the law directs the Attorney General to collect back taxes not in all cases where the taxes originally levied and paid were based on undervaluation, but only where property belongs to corporations at the time of the assessment and also at time of suit. He is not permitted to bring suit to make such collections against lands owned by individuals even if they were owned by corporations when undertaxed. As here applied, the Act singles out the lands of a corporation, leaving those of natural persons free from such claims. Transfer to an individual, whenever made, prevents the operation of the Act.

This case cannot be distinguished from *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389. There the tax in controversy was imposed upon the corporation's gross receipts derived from the operation of taxicabs. But the gross receipts of individuals in the same line of business were not taxed. And for that reason the law was held repugnant to the equal protection clause. The Court said (p. 402): "Here the tax is one that can be laid upon receipts belonging to a natural person quite as conveniently as upon those of a corporation. It is not peculiarly applicable to corporations as are taxes on their capital stock or franchises. . . . The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference . . . in the situation or char-

acter of the property employed." It is not pretended that such back taxes on lands of individuals may not be imposed as conveniently as upon those of corporations. The Arkansas law imposes a tax liability on lands of a corporation to which lands of an individual are not subjected. That case rules this one.

But there are cited in support of the decision below *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526; *New York State* v. *Barker*, 179 U. S. 279, 285; *Florida Central, &c. R. R. Co.* v. *Reynolds*, 183 U. S. 471, 480; and *Fort Smith Lumber Co.* v. *Arkansas*, 251 U. S. 532, 534.

Winona & St. Peter Land Co. v. *Minnesota*, *supra*, did not present any question under the equal protection clause. A state law provided generally for the assessment and taxation of both real and personal property which had been omitted from the tax roll. Lands of the company were assessed under the Act. It insisted (p. 528) that the Act violated the contract clause and the due process clause.

In support of the latter contention, the company argued that, as to back taxes on personal property, the Act was invalid because it failed to provide for notice to owners before the charges were fixed against them; that it could not be assumed that the legislature would attempt to enforce back taxes against lands alone, and that therefore the whole Act fell. But the state court declined to pass upon that contention, 40 Minn. 512, 521, and held that in any event back taxes on personal property might be enforced by an ordinary personal action. This court said (p. 539): "It seems to us . . . that the assumption that it cannot be believed that the legislature would never seek to provide for the collection of back taxes on real property without at the same time including therein a like provision for collecting back taxes on personal property, cannot be sustained. The case is different from that of an ordinary tax law in which there may be some foundation for the claim that the legislature is expected to make no discrimination, and would not attempt to provide for the collection of taxes on one kind of property without also making provision for collection of taxes on all other property equally subject to taxation . . . and it may well be that the legislature in view of the probabilities of changes in the title or situs of personal property might deem it unwise to attempt to charge it with back taxes, while at the same

time, by reason of the stationary character of real estate, it might elect to proceed against that." The court concluded that in any event it was for the state court to determine whether the Act was severable.

Both in Minnesota and Arkansas, taxes and back taxes on personal property are enforceable against the owner; taxes and back taxes on land are enforced only against the land. The Minnesota Act did not attempt to make any classification. Moreover, a discrimination between personal property and land is essentially different from that attempted by the Arkansas statute. The equal protection clause does not require that, for purposes of taxation, land must be put in the class with merchandise, moneys, credits, livestock and other personal property. The differences in kind are sufficient to warrant classification.

In *New York State* v. *Barker*, *supra*, the controversy concerned an assessment of a corporation's capital stock. It was a proceeding against the corporation itself. There was no question in the case of increasing, reassessing or collecting taxes on land. The real estate of corporations and individuals was directly assessed, and the law required this assessment to be at actual value. In addition, there was imposed on corporations a capital stock tax, to be determined by deducting from total value of all its property, tangible and intangible, its debts and the assessed value of real estate, the remainder to be taxed as capital stock.

The taxing officers found the "actual value" of real estate to be $965,000 and added other property, making total gross assets, $1,095,049; they deduced debts, $329,050, and "assessed value" of real estate, $600,000, leaving $165,999, to be taxed as capital stock. The corporation insisted that in determining total gross assets the assessed value of the real estate should be substituted for its actual value; that would leave nothing to be taxed as capital stock.

Its contention was that the taking of its real estate at actual value instead of assessed value denied to it equal protection of the laws. This court pointed out (p. 284) that the failure to assess the company's real estate at its actual value for separate taxation and the use of actual value to ascertain the capital stock tax could work no denial of equal protection if the real estate of individuals was in fact assessed at its full and true value as re-

quired by law. And it said: "There is no allegation . . that there has been any undervaluation of real estate, either with regard to individuals or corporations. . . . (p. 285). But we are . . asked . . in the absence of allegations or proof of habitual, or indeed of any undervaluation, to assume or take judicial notice of its existence, notwithstanding such undervaluation would constitute a clear violation of the law of the State. . . . (p. 286). Whether, if the case were proved, as assumed by counsel, it would in fact amount to any such discrimination against corporations as to work a denial to the plaintiff of the equal protection of the laws, is a question not raised by this record, and, therefore, not necessary to be decided." It requires no discussion to show that this case is not in point.

Florida Central, &c. Railroad Co. v. *Reynolds, supra*, considered a Florida statute providing for collection of back taxes on railroad properties. The single question was (p. 474) whether to reach backward and collect taxes from certain kinds of property without also making provision for collecting taxes on other kinds of property transgressed the equal protection clause. It was held, as is well understood, that railroads so differ from other kinds of property that they may be separately classified. The case has no bearing here.

In *Fort Smith Lumber Co.* v. *Arkansas, supra*, the suit was to enforce an obligation of the corporation itself and not merely a claim for taxes against its land. The company in that case owned stock in two other Arkansas corporations and claimed it was entitled to omit such shares from the taxable value of its own stock. It defended on the ground that individuals are not taxed on such stock or subject to suits for back taxes. The Court said: "If the State of Arkansas wished to discourage but not to forbid the holding of stock in one corporation by another and sought to attain the result by this tax or if it simply saw fit to make corporations pay for the privilege, there would be nothing in the Constitution to hinder. . . . The same is true with regard to confining the recovery of back taxes to those due from corporations. It is to be presumed, until the contrary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the State".

This court assumed that the special burden was imposed in pursuit of a definite purpose on the part of the State in respect of incorporated owners of stock in Arkansas corporations. That decision rests upon the ground that the tax was peculiarly applicable to corporations. But a tax on land is not.

As the back taxes claimed are enforceable only against the land, there is no basis for the suggestion that there exists here any reason for more strenuous efforts to collect from corporations than from natural persons.

And there is no basis for an assumption like that made in the *Fort Smith Lumber Co.* case. The classification, at least when applied to land, is fanciful and capricious. *Liggett Co.* v. *Baldridge*, 278 U. S. 105, 114.

The decree should be reversed.

The CHIEF JUSTICE and Mr. Justice VAN DEVANTER concur in this opinion.

IN THE

United States Supreme Court

OCTOBER TERM, 1928.

WHITE RIVER LUMBER COMPANY ..... *Appellant*,

v. No. 101.

STATE OF ARKANSAS, EX REL., H. W. APPLEGATE, AS ATTORNEY GENERAL ..... *Appellee*.

PETITION FOR REHEARING.

Comes the appellant and prays that a rehearing be granted herein, and for cause says:

Specifications of error Nos. 3, 4, 5, 6 and 7, question the validity of the back tax statute of Arkansas, as applied by the Supreme Court of Arkansas in this case. This Honorable Court has declined to pass upon the questions raised by said specifications of error, for the reason stated in the opinion, as follows:

> "It does not appear, however, from the record that this constitutional question was presented in or passed upon by the Supreme Court of the

> State; and as it was sought to raise this question for the first time by assignments of error in this court, it is necessarily excluded from our consideration."

The question involved did not arise until the decision of this case by the Supreme Court of Arkansas, and consequently could not have been raised by appellant prior to that time, nor in any other way than by a petition for rehearing in that court. A petition for rehearing was duly filed. This petition set out in detail the effect of the decision and the resulting violation of Section 1 of the 14th Amendment to the Constitution of the United States. For convenience of the Court, a copy of that part of the petition material to this question is printed as an appendix to this petition.

That petition for rehearing was submitted on briefs, although the briefs are not a part of the record here. On January 30, 1928, the Supreme Court of Arkansas made an order in reference thereto as follows (Rec. p. 255):

> "The petition for rehearing heretofore filed in this cause being called, is now submitted with the response and briefs filed, and is by the Court taken under advisement."

On February 13, 1928, the Supreme Court of Arkansas overruled the petition for rehearing by the following order (Rec. p. 256):

> "Being fully advised the petition for rehearing filed in this cause, is by the Court overuled."

The petition for rehearing and the order overruling same were certified to this Court as a part of the record on this appeal. (Original record, pp. 369-380).

Therefore, it affirmatively appears from the record filed in this Court that the Supreme Court of Arkansas had the petition for rehearing, submitted on briefs, under advisement for two weeks. The petition was denied without an opinion, but it could not have been denied without a decision of the Federal questions raised by the petition, and a denial of the rights asserted by appellant under the Federal Constitution. This method of raising a Federal question in a state court has always been considered sufficient to present the question to this Court for decision.

Whitney v. *Calif.*, 274 U. S. 357;

Marvin v. *Trout*, 199 U. S. 212;

Consolidated Turnpike Company v. *N. & O. V. Ry. Co.*, 228 U. S. 596.

"The record shows that the question was raised and the certificate shows that it was not treated as having been raised too late under the local procedure, a point upon which the State court is the judge. It is enough that the Federal question was raised and necessarily decided by the highest court of the State."

Cincinnati Packet Co. v. *Bay*, 200 U. S. 179.

"But since the court of last resort of the State actually dealt with and passed upon the question raised by plaintiff in error as to the validity of the statute upon the ground of its being repugnant to the Constitution of the United States, and decided in favor of its validity, it is clear that, un-

der the first paragraph of Sec. 237, Judicial Code, as amended by Act of September 6, 1916, c. 448, 39 Stat. 726, we have jurisdiction to pass upon the question, and the motion to dismiss must be denied. *Miedreich* v. *Lauenstein*, 232 U. S. 236, 243; *North Carolina R. R. Co.* v. *Zachary*, 232 U. S. 248, 257."

C., R. I. & P. Ry. Co. v. *Perry*, 259 U. S. 548,

A statement of points to be relied upon in this Court was filed pursuant to paragraph 5 of rule 13 of this Court. Attached to and made a part of said statement was an agreement between counsel, reading as follows (Rec. p. 265):

> "It is agreed by the parties hereto that the entire record in this case is necessary for the consideration of the points involved."

Notwithstanding the agreement of counsel, above set forth, the clerk of this Court did not incorporate the said petition for rehearing in the printed record, but referred thereto on page 255 of the record as follows:

> "(Fols. 369-380). Petition for rehearing, covering twelve pages, filed January 23, 1928, omitted from this print. It was denied and nothing more by order February 13, 1928."

Upon inquiry of the clerk, having in charge the printing of records, as to why this petition for rehearing had been omitted, counsel for appellant was informed that the omission was made pursuant to instructions from this Court, to the effect that petitions for rehearing should not be printed in the record.

Attention was called to the petition for rehearing on page 10 of appellant's brief. The assignments of error covering this question were argued in the briefs of both parties and, as much as time would permit, in the oral argument, and at no time was it contended that the question had not been properly raised.

We submit, therefore, that the Federal question involved is shown by the record to have been properly raised in the Supreme Court of Arkansas and to have been properly certified to this court. If, under the requirements of this court, the petition for rehearing which was filed in the state court should have been in the printed record in this court, the failure in that regard is not chargeable to appellant, because such petition for rehearing was included in the parts of the record designated by the parties to be printed.

Appellant prays, therefore, that a rehearing be granted and that the court consider the questions raised by its specifications of error hereinbefore referred to, and, pending a rehearing, that the mandate herein be withheld.

Respectfully submitted,

GEO. B. PUGH,
H. T. HARRISON,
A. S. BUZBEE,
THOS S. BUZBEE,
Attorneys for Appellant.

I, Thos. S. Buzbee, one of the attorneys for appellant in this cause, hereby certify that the above petition is filed in good faith and not for delay.

Thos S Buzbee

APPENDIX

PETITION FOR REHEARING

Filed in the Supreme Court of Arkansas, as shown by Original Record in this court, pages 369-380.

Appellant respectfully prays this Honorable Court to reconsider its decision rendered in the above entitled cause on the 9th day of January, 1928, and to grant it a rehearing, and as grounds for this petition, states: (omitting parts not now material).

II.

1. Sections 9919, 9924 and 10009, C. & M. Digest, provide that each tract of land shall be assessed separately.

Section 9924, C. & M. Digest, directs every assessor, on or before the second Monday in September in the year 1887, and every second year thereafter, to assess all real property in the manner therein described, to set out the names of the owners, the description of each tract by section, or the largest subdivision of which the same is capable, designating the numbers of the section and the part thereof, and to make, in connection therewith, the following affidavit: "I_____, assessor do solemnly swear that the foregoing is correct and that I have appraised each tract or lot of land,

except United States or State lands, at its true value in money, and not at what it would bring at auction or at a forced sale, so help me God."

Act 234 of the Acts of 1917, as amended by Act 147 of the Acts of 1919, directs that real property shall be assessed each year instead of every two years, and taxpayers are given the right of appeal from assessments made in each year.

Section 9866, C. & M. Digest, directs the county court of each county to meet annually, on the first Monday in October, for the purpose of levying the county taxes.

Sections 8950, *et seq.*, C. & M. Digest, direct that school districts shall hold elections each year "to determine what amount of money shall be raised by tax on the taxable property of the districts," etc.

Sections 9864 and 9865, C. & M. Digest, direct that all levies of taxes in cities and towns shall be based upon the appraisement of the county assessor.

Section 9870, C. & M. Digest, authorizes any person having real or personal property assessed for taxation to appear before the county court at the time of the levy of taxes by it, or at the succeeding term thereafter, and object to the levy of any specific tax for illegality.

The levy of taxes on lands in the so-called Big Island group varies from 20 3-8 mills in 1915 to 29.7 mills in 1926. In 1916 levies on lands in the same group vary from 20 3-8 mills to 22 3-8 mills; in 1917, from 15½ mills to 27½ mills in 1918, from 15½ mills to 27½ mills; in 1919, from 22.7 mills to 27.7 mills; in 1920, from 25.7 mills to 27.7 mills; in 1921, from 23.7 mills to 28.7 mills (Tr., pp. 390 to 402).

The decision of this court has directed an assessment on thirty-four separate tracts of land, located in eighteen separate sections, for twelve separate years.

The court cannot find such values from the testimony, for the following reasons, one of which is stated by the court in its opinion as follows:

"It was also shown that during the years for which the State asks back assessments large quantities of the timber had been stolen, and that in recent years large quantities had been sold, and that the value of the lands was proportionately reduced * * *. No attempt was made to show from what tracts of land timber had been sold or stolen."

The latter statement must be qualified by the uncontradicted testimony of witness Keaton that Section 22 and the Northwest Quarter of Section 23, T. 4 S., R. 1 W., containing 549.36 acres, was logged in 1920. Descriptions of other lands logged or from which timber was cut on Big Island are not given.

No witness has undertaken to state the value of any land prior to the year 1920. The years 1915, 1916, 1917, 1918 and 1919 are not mentioned by any witness in connection with the value of any tract of land, except that witness Dennison stated that 1919 was a good year for logs.

The court in its decision has disregarded the requirements that each tract of land shall be assessed separately for each year for which assessments were made, and has fixed an arbitrary average value covering thirty-four different tracts of land for twelve annual assessment periods.

The result of this decision is:

First: To charge some tracts of land which belong to the defendant, such as the sections which have been cut over, with an excessive assessment, because of the fact that defendant owns other tracts of land which may be more valuable.

Second: To charge an excessive assessment against the lands of defendant for some of the years because said lands have been more valuable in other years.

Third: The testimony is uncontradicted that defendant owns over 40,000 acres of land; that this land is in a continuous body; that hundreds of acres of said land have never had any timber on them; that a great deal of the timber on the other lands has been stolen and much of it has been cut, rendering the lands prac-

tically worthless. Twenty-one thousand acres of this land is in Arkansas County. If it be assumed that the court is authorized on any theory to average the value of lands belonging to defendant, the court has discriminated against defendant by selecting from defendant's lands one-third of the best lands in Arkansas County upon which to base an average instead of taking all of the defendant's lands or at least all in that county.

Fourth: The court has necessarily charged the less valuable of defendant's lands, which lie in one school or taxing district with an excessive and exorbitant tax, because defendant owns lands in other districts which may be more valuable. The lands in the so-called Big Island group are in three school districts with different levies in each district. The court has undertaken to average the values in each district, but cannot average the levies.

Fifth: The court, in fixing an assessment on defendant's lands based on an average of twelve years, has fixed an erroneous and arbitrary average, by failing to take into consideration the value of said lands during the period which said lands have been owned by defendant prior to 1915 or may be owned by it subsequent to 1926.

Sixth: The decision of the court has increased the assessable value of property in the school districts or other taxing districts in which the lands of defendant are located $77,449.20 for the year 1915, and pro-

portionate amounts for subsequent years. The levies of taxes for each of said years were based upon the assessed value of the property in the district or districts for the years in which said levies were made. The court, in increasing the assessed value of property in said district, has necessarily changed the amount of taxes which the various levying bodies would have been required to levy and, in doing so years after the time permitted by statute to object to said levies has expired, has denied to this defendant the right to object to said levies and have same reduced to an amount justified by the increased valuation.

Seventh: The uncontradicted testimony shows that Big Island contains approximately 9,000 acres; that defendant owns thereon approximately 7,200 acres (Keaton's testimony, Tr., p. 136); that the other land on Big Island and other large tracts of land in Arkansas County are as valuable as the land of defendant and are assessed at from four to five dollars per acre only. The decision of the court, therefore, has assessed the property of defendant at a higher rate than other property of like character and like value has been assessed.

2. The court by its decision has ordered that lands described as E. of Chute, South-half, South-half, Section 22, Twp. 4 South, Range 1 West, shall be assessed at $3,104.16; that E. of Chute, North-half, South-half, Section 22, Twp. 4 South, Range 1 West, shall be assessed at $1,389.96; that N. of Chute, part of fractional

Northwest Quarter of Section 23, Township 4 South, Range 1 West, shall be assessed at $889.56 and that South-half, Northwest-half, Section 23, T. 4 S., R. 1 W., shall be assessed at $960.00, all of these assessments to be made for each of the years 1915 to 1926, inclusive. These tracts total 528.64 acres. The only reference to these tracts made in the testimony is in the uncontradicted testimony of witness Keaton (Tr., p. 135) as follows:

> "We logged Section 22, and Northwest Quarter of Section 23, Twp. 4 South, Range 1 West, 549.36 acres. We logged that in 1920."

According to the testimony of every witness who testified on the subject, cut-over lands were practically worthless, and, therefore, these lands could not have been worth $40.00 per acre in the years 1921, 1922, 1923, 1924, 1925 and 1926. The levy of taxes against these tracts of lands has been increased from 23.7 mills in 1921 to 29.7 mills in 1926. The court, in denying the appellant the right to have these tracts of land assessed separately for each year and directing the assessment of said tracts of land on the basis of an average value in combination with other tracts of lands, has charged said tracts with an excessive assessment for six years, at a rate of taxation higher than was levied when said tracts had timber.

The same discrimination exists as to all other tracts of land embraced in the decision of the court, which for any reason have become less valuable than

the so-called average during any of the years 1915 to 1926, inclusive.

3. The Chancellor included in lands in the so-called Big Island group 537.81 acres of land in Section 22, Twp. 4 South, Range 1 West, which are not on the island lying between White River on the East and the Chute on the West. This is the island which the court has found to be Big Island. We do not know whether the decision of this court contemplates that said land in Section 22 shall be included within the Big Island group or not. If so, we submit, first, that there is no testimony identifying this land in any manner, or showing an equal or comparative value with lands on Big Island; and, second, that the decision of the court, in directing the assessment of said lands at $12.00 per acre, discriminates against the lands of this appellant, because all other land of like character is assessed at only four to five dollars per acre.

For the reasons above stated, the decision of the court denies to appellant the benefit of the uniformity clause of the Constitution of the State of Arkansas, and denies to appellant the equal protection of the law, and the same is, therefore, in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

4. The effect of the decision of the court in increasing the assessments of lands of defendant for each of the years 1915, 1916, 1917, 1918 and 1919, without any testimony upon which to base said increases, and

basing the assessments for all years and on all tracts upon a system of averages instead of actual values for each year and each tract, is to deprive appellant of its property without due process of law, in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

If the court is of the opinion that there is clear and satisfactory evidence that some lands on Big Island belonging to the defendant have been underassessed, and, for that reason, that the case should not be dismissed, then the court should reverse and remand the case, for the purpose, either:

First, of having such underassessment determined as to each tract of land for each of the years involved, in accordance with the statutes and in the same manner that assessments are required to be made in the first instance against property of all other persons; or,

Second, if the court holds that such underassessment can be established on a basis of averages for either territory or time, then the court should lay down the rule by which such averages can be established, giving the limits as to time or territory and affording the defendant an opportunity to introduce testimony and make its defense on that basis. The average theory which the court adopts in this case, has not been suggested by any statute or decision of this State prior to this time and appellant has therefore had no opportunity to introduce much testimony which can be obtained to support its defense on that theory.

WHEREFORE, appellant prays that the decision heretofore rendered be set aside and that this case be reversed and dismissed, or that it be reversed and remanded as to lands in the so-called Big Island group, with directions as to further proceedings, or, in any event, that the decree be modified to permit an assessment on the basis of not more than $7.50 per acre, being 30 per cent of $25.00 for the years 1920 to 1926, inclusive.

Respectfully submitted,

BUZBEE, PUGH & HARRISON,

Attorneys for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

WHITE SEWING LOCKING COMPANY, *Appellant*,

v. No. 102

STATE OF ARKANSAS, EX REL. H. W. APPLEGATE, AS ATTORNEY GENERAL, *Appellee*.

APPELLANT'S STATEMENT IN RESPONSE ON PETITION FOR REHEARING

GEO. B. PRATT,

TROY S. BUTLER,

Attorneys for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

WHITE RIVER LUMBER COMPANY ..... *Appellant*,

v. No. 101

STATE OF ARKANSAS, EX REL H. W. APPLEGATE, AS ATTORNEY GENERAL ..... *Appellee*.

APPELLANT'S STATEMENT IN RESPONSE ON PETITION FOR REHEARING

In view of some apparently conflicting statements in the petition for rehearing and the response thereto made by appellee, we feel justified in asking the court to permit us to file a short statement in reply.

The petition for rehearing states that the questions involved in the specifications of errors referred to did not arise until the decision of the case by the Supreme Court of Arkansas (Petition for Rehearing, p. 2). The opposition to the petition filed by appellee states (p. 4) that the statement is not true, because the same questions of fact and law were presented to both the chancellor and the State Supreme Court and that necessarily the same questions arose. The statement of appellee is correct. The statement in the petition had reference to raising the questions *on the record* and probably should have been qualified by stating that the

questions were raised *on the record* at the first opportunity. The arguments in the Chancery and Supreme Courts are not part of the record.

The answer filed in the State Chancery Court alleged the unconstitutionality of the Act of Arkansas as attempted to be enforced in this case (Rec. p. 18), and that issue was tried in the chancery court. On an appeal from a chancery court in Arkansas, there is no motion for new trial or assignment of errors. The whole record is taken up and the case is tried by the Supreme Court *de novo*. The rule is stated by the Supreme Court of Arkansas in the case of *Leach* v. *Smith*, 130 Ark. 465, as follows (p. 469):

> "In law cases the jury, in the first instance, are triers of fact, and the trial judge, on a motion for a new trial, may review the evidence to determine whether the verdict is against the preponderance thereof. This court, on appeal, in law cases, leaves the jury and the presiding judge to weigh the evidence and decide as to its preponderance. This is peculiarly their function, and we do not set aside the results thus attained where there is any evidence at all of a substantial character; that is, legally sufficient, to sustain the finding on the issues of fact. In other words, in law cases this court, on appeal for review for errors, is not a trier of facts.
>
> "But in chancery causes the procedure is entirely different. When chancery causes reach this court on appeal they are taken up for trial *de novo* on the record made up in the lower court, that is, on the same record, but the law and the facts are examined the same as if there had been no decision at *nisi prius*."

The peculiar construction of the Act of Arkansas resulting in the discrimination complained of by the specifications of errors referred to was first made by the Supreme Court of Arkansas in the decision under review, and the objections to that decision were placed of record at the first opportunity. Counsel for appellee admit that the questions were presented to the Supreme Court of Arkansas (appel-

lee's response, p. 4) and do not suggest that the questions could or should have been raised in any other way. The case could not have been decided either on the original hearing or on the petition for rehearing without a decision of those questions against the contention of appellant. It is true that the Supreme Court, in overruling the petition for rehearing, did not render an opinion, but this is a matter which could not be controlled by appellant, and the appeal provided for to this court is from the decision of the State Court and not from the opinion.

We submit that the construction placed upon the Arkansas act by the Supreme Court of Arkansas for the first time in the decision rendered in this case and the enforcement of the act under that construction has denied to appellant the equal protection of the law; that appellant has adopted every known method of presenting the question to this court, and the petition for rehearing should be granted.

Respectfully submitted,

GEO. B. PUGH,

THOS. S. BUZBEE,

Attorneys for Appellant.

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IN THE

Supreme Court of the United States

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

WHITE RIVER LUMBER COMPANY ..... *Appellant,*

v. No. 101.

STATE OF ARKANSAS, EX REL., H. W. APPLEGATE AS ATTORNEY GENERAL ..... *Appellee.*

APPEAL FROM THE SUPREME COURT OF ARKANSAS

BRIEF OF APPELLEE

STATEMENT

This suit was filed by the State of Arkansas on the relation of the Attorney General to recover back taxes on lands of appellant under the provisions of the statutes of the State. Recovery is sought for the State itself, and also for the counties and school districts in which the lands in question are located.

In the original complaint judgment was asked on appellant's capital stock under Section 9965 of Crawford & Moses' Digest of the Statutes of Arkansas, inasmuch as appellant had never filed with the county assessor for any of the years in question an intangible property report and had never paid taxes on its capital stock. Soon after the suit was filed, the Arkansas Supreme Court, in the case of *State of Arkansas* v. *Lion Oil & Refining Company,* 171 Ark. 209, held the capital stock of foreign corporations not to be taxable, owing to the fact that such stock has no

situs in this State, and that any attempt to tax it would be in violation of the Federal Constitution.

Appellee then filed an amendment to its complaint to recover taxes on timber lands of appellant in Arkansas, Phillips, Monroe and Desha counties. Practically all of the lands lie in a body and extend up and down White River, the river being the boundary line between the counties. The lands, by reason of the quantity and quality of timber upon them, naturally fall into two classes, one group being designated throughout the suit as the "Big Island lands," embracing 7,964 acres, and the remainder of the lands, embracing approximately 37,000 acres, constituting the other group. The former is the more valuable. It has been the State's contention that the "Big Island" group of lands possesses a value in excess of $65.00 an acre, and the other group a value in excess of $30 an acre, which value said lands have possessed throughout the period covered by this suit. The lands are specifically described in an exhibit to the amended complaint.

Practically all of appellant's lands have been assessed for each of the years 1915 to 1926, inclusive, at approximately $4.00 per acre. The actual assessments for each of the years are set out in a stipulation filed by counsel (R. 231).

It is contended by the State that all of the lands have been grossly underassessed throughout said period, and at a figure far below the average assessment of property generally throughout the State, and also far below the average assessment of other similar property in the county in question. The trial court rendered a decree against all of said lands for overdue taxes by reason of underassessment, but declined to sustain the legal rate of taxation provided for by the Statutes of Arkansas, which is 50% of the true value of property. The chancellor found the average percentage of assessment of other property throughout Arkansas County to be 30%, and ordered appellant's lands likewise to be assessed at 30% of their value.

On appeal to the Supreme Court of Arkansas that court declined to render judgment against appellant on the group of lands comprising approximately 37,000 acres, because of the fact that the testimony was too indefinite and uncertain. As to the "Big Island" group, comprising 7,964 acres, however, the court rendered judgment against appellant. The chancellor had found the "Big Island" group of lands to

have possessed a value of $50.00 an acre throughout the period covered, but the Supreme Court reduced this figure to $40.00 an acre, and sustained the chancellor's finding of the average assessment of other property in the county to be 30 per cent. The Supreme Court likewise ordered appellant's lands to be assessed at 30 per cent of the value found.

It was earnestly insisted by appellant that the back tax law of the State of Arkansas (Sections 10204 *et seq.* of Crawford & Moses' Digest of the Statutes of Arkansas) is unconstitutional as being in violation of the uniformity clause of the State Constitution and the due process and equal protection clauses of the Federal Constitution. The State Supreme Court sustained the constitutionality of the law, and from its judgment the White River Lumber Company has prosecuted this appeal.

ARGUMENT

I. SUMMARY

The State, to prove the value of the timber lands, introduced two witnesses, S. B. Dennison and C. H. Kirkpatrick. The latter was not familiar with the value of timber or logs during the years in question, but had been over all these lands two or three times a year for the last 15 years and was very familiar with the amount and quality of the timber. He had been assisting in the cruising of timber in that vicinity and knew how to estimate the quantity of timber on land.

The witness S. B. Dennison, an expert timber man, who had for 9 years been in the timber business in that vicinity, testified both as to the value of the timber on the land, and also the kind, quality, and quantity of said timber. He had purchased in the same county, either for himself or other timber men, several large tracts of timber, one of the purchases involving a consideration of approximately $250,000.00 (R. 43). His testimony is substantiated by certified copies of three warranty deeds covering these purchases. As to the Big Island group of lands, his testimony is very explicit and in great detail.

Some of the facts sought to be proved by the State are admitted by the appellant's witness, W. W. Keaton, such as the cost of logging the timber. The value of logs for the years 1919 to 1925 is conclusively shown by the prices which appellant received from the sale of logs from other lands it had owned in the same county from 1919 to 1925. The net value of the standing timber was found by taking the value of the timber per thousand feet, and deducting therefrom the cost of logging the timber. The State made no attempt to place any value on the land itself after removal of the timber, as it is overflow land. These figures were merely submitted to the court as an assistance in arriving at the actual value of the timber lands. There were no sales of similar lands in the county, the Big Island group being exceptionally well timbered. It was testified that they were the best timber lands in that entire country.

Appellant, to prove that assessments generally in the county were below the legal percentage of value, introduced two former tax assessors of Arkansas County, who testified they had been ordered by the Arkansas Tax Commission

to assess property in the county at 50 per cent of its actual value. They testified they attempted to assess on this basis, and when they actually knew the value of property it was assessed at 50 per cent. However, they admitted the average assessment throughout the county would not be 50 per cent, but probably 33 1/3 per cent of the value of the property. Appellant also introduced a list of 318 transfers of real estate in the county, showing the considerations recited in the respective deeds and the amount at which each piece of property had been assessed for taxation. According to our figures, the average assessment of the properties covered in this list of 318 transfers is approximately 22 per cent of the value of the properties, taking the considerations recited in the deeds as the actual values.

Appellee, to rebut the above testimony, and to sustain the 50 per cent basis of assessment prescribed by law, introduced the present tax assessor (who had served for the last four years) and a member of the township board of assessors (who had served since about 1917), who testified substantially the same as appellant's witnesses as to the basis of assessment and the actual average. Appellee also introduced a list of 240 transfers similar to that of appellant. The average assessment, we find, of the properties in this list is approximately 56 per cent of the value. The trial court and the State Supreme Court both found the average assessment in the county to have been 30 per cent during the period in question.

Stipulations were signed by the parties as to the tax rates applicable, the actual assessments of each tract of land involved and other undisputed facts of minor importance.

The specification of errors will be found on page 11 of appellant's brief.

The Arkansas statute authorizing this suit is copied in appellant's brief at page 45.

II.

THE BACK TAX ACT OF ARKANSAS DOES NOT VIOLATE EITHER THE EQUAL PROTECTION CLAUSE OR THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION.

It is stated by appellant that the Back Tax Act of Arkansas, in providing for the reassessment of lands of appellant by judicial proceedings, is in violation of the due process and equal protection clauses of the Constitution of the United States, because it provides for a reassessment of the property of corporations, and not that of individuals. It would seem that the decision of this Honorable Court upon that question in the case of *Fort Smith Lumber Company* v. *Arkansas*, 251 U. S. 532, should be conclusive. In that case the statute now involved was expressly held to be constitutional. Further reference will be made to this case later.

In the State court it was appellee's contention that the property in question should be assessed at the legal rate, or 50 per cent of its actual value. Section 9790 of Crawford & Moses' Digest of the Statutes of Arkansas reads as follows, eliminating the parts not applicable:

> "The Arkansas Tax Commission shall file with the county clerk and the assessor of each county a certificate showing the per centum of market value that it has used, or will use, in valuing for taxation for that year the property it is required to value, and it shall be the duty of tax assessor (and the members of the board of equalization) in each county not to assess or reduce the value of any item of property for the purpose of taxation in that year below the per centum of market value so certified by the Tax Commission." • • •

It is shown in evidence by the testimony of the assessors and also by stipulation of counsel (R. 229) that 50 per cent was the basis of assessment certified by the Tax Commission throughout the State of Arkansas for the period in question.

The statute further makes it unlawful for any assessment to be reduced below the percentage actually certified by the Tax Commission. This court has repeatedly held that no taxpayer can escape payment of taxes at the legal rate merely by reason of other underassessments. There

must be a systematic and intentional underassessment of other property.

In the case of *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, it was held:

> "A taxpayer whose property was assessed at its full valuation as required by the State Constitution and laws, though other property of the same class was *intentionally and systematically* assessed by the State officials at less than its full value, can have its assessment reduced to the same proportion of its value that other similar property is assessed. • • •
>
> "Mere errors of judgment in the assessment of other property do not support a claim of discrimination entitling a taxpayer to a reduction of his assessment below the actual value of his property, but there must be something more, something which, in effect, amounts to an intentional violation of the principle of practical uniformity."

The same rule was laid down in the case of *Southern Railway Company* v. *Watts*, 260 U. S. 519. Practically all of the authorities directly in point may be found in the recent note in 3 A. L. R. at page 1370, together with supplemental notes on the same question in 28 A. L. R. page 983, and 55 A. L. R. page 503.

In view of the testimony in the case it seemed to us there was no showing of any system or intention to assess other property below the legal rate of 50 per cent. That the average assessment in the county in question fell somewhat below the legal requirement was entirely natural as it is hardly to be expected that the average will in any State come entirely up to the legal requirements. Three tax assessors and a member of the township board of assessment who served during the period in question testified practically to the same effect, that is, that they were instructed by the Tax Commission to assess property at 50 per cent of its value, and that they attempted to do so. They admitted the average assessment in the county would not come up to this figure, but would probably be about 33 per cent of the value of the property in the county.

It will be borne in mind that there is not one word of testimony in the record of a State-wide nature. Although there are 75 counties in the State of Arkansas, all of the

testimony which appellant has introduced is applicable to only one county.

The only other testimony relating to the question of uniformity consists of a list of 558 transfers of real estate (hereinabove mentioned), all of which are confined to one county (R. 162-225).

We believe that these transfers alone show that there has not been a system or intention to assess property in the county in question below the legal rate of 50 per cent. If there are 240 pieces of property in one county assessed at an average above the legal rate, as is the case here, that, in itself, will almost preclude any idea of a rule or system of assessing property below the legal 50 per cent rate. It is, of course, not to be assumed that there are only 240 pieces of property in that county which are assessed at the legal percentage, but there are, in fact, 240 out of the 558 pieces of property mentioned assessed at an average equaling the legal percentage.

The Supreme Court of Arkansas concluded, however, that there had been a systematic and intentional assessment of property in the county at a figure below the legal percentage. It accordingly, following the finding of the chancellor, assessed appellant's lands at 30 per cent of their value to conform to the average assessment in the county.

Appellant now asks further relief because of the fact that there are a few (and there are only a few) other owners of virgin timber lands in the county in question whose lands are also grossly underassessed. Appellant states its lands are no more valuable than these other virgin timber lands mentioned, and that it is a denial of the equal protection clause of the Federal Constitution to raise appellant's taxes when a few tracts of the other virgin timber lands are owned by natural persons and cannot be taxed accordingly.

It is to be remembered, as is disclosed by the testimony copied in appellant's brief, that the vast majority of the timber lands in Arkansas County is cutover and of practically no value. Those lands are owned almost entirely by natural persons and in small parcels. The valuable virgin timber lands are owned almost entirely by a dozen taxpayers, mostly timber companies (corporations). It is true there are two or three natural persons in the county

who own timber lands of considerable value, but the balance of the valuable lands are owned by corporations.

We are concerned now only with the lands designated as the "Big Island" group, inasmuch as the State Supreme Court rendered judgment only on those lands. The "Big Island" group lie on an island formed by White River and a chute and lie very favorably for river transportation, the width of the island being about two miles. The island consists of only approximately 9,000 acres, of which appellant owns more than 7,000 acres.

In many parts of their brief counsel for appellant have quoted testimony of the State's witnesses to show the lands of appellant are of about the same character as the other timber lands of the county. In quoting this testimony counsel have omitted that part of the testimony of the witness S. B. Dennison which expressly states his comparisons relate to the lands of the company other than the "Big Island" group, and that he considers the "Big Island" group far better than any other lands in the county.

The witness Dennison testified on this point as follows:

"Q. How does the land of the White River Lumber Company on Big Island compare with that (the Porter tract)?

"A. Big Island's better. It's the best tract in that whole country. (R. 136) • • •

"Q. How does it (The Wylie-Bush tract) compare to the tract on Big Island?

"A. I think Big Island is one of the best in either county.

"Q. Is it more valuable or not than the Wylie tract?

"A. I think it is more valuable. It's easy to log. You have got the river on one side and the chute on the other, and you can haul it for less money.

"Q. What was paid by S. M. Bush?

"A. Forty-five dollars an acre.

"Q. You stated you handled that deal?

"A. Yes sir" (R. 138).

The witness Dennison also testified, after making comparison of the White River Lumber Company's lands to other timber lands in the county, as follows:

"Q. Now that comparison doesn't refer to the Big Island tract?

"A. No sir. Big Island is an especially fine body of timber; best that has ever been known" (R. 41).

The witness further testified as to the value of the Big Island group:

"Q. What is that land worth?

"A. Well, that land's worty sixty-five dollars an acre. I would be glad to buy it at sixty-five.

"Q. Is there any other of this land that is worth that much?

"A. Yes, they got some just west of Big Island Chute, on the chute in Arkansas County—I say now five hundred acres, I don't remember—don't know just exactly how many acres are there, but around five or six hundred, as good—

"Q. Just as good as the Big Island land?

"A. Yes sir.

"Q. Did you say you would be willing to pay sixty-five dollars an acre for the seventy-two hundred-acre tract?

"A. Yes sir.

"Q. And the five hundred acres?

"A. Yes—they have cut some on there. Yes sir, taking out what they have cut over, I could handle that at sixty-five dollars an acre.

"Q. Would you make that offer?

"A. Yes sir.

"Q. Now, at sixty-five dollars an acre?

"A. Yes sir.

"Q. For the seventy-two hundred acres and the five hundred acres?

"A. Less what they have cut; they have cut some this year on that land.

"Q. Less what they have cut in the last two or three months?

"A. Yes sir.

"Q. You would make that proposition, would you?

"A. Yes sir.

"Q. What do you base your estimate of values on, Mr. Dennison?

"A. Well, they have got—on that land they have got about fifty-five hundred feet of commercially good timber per acre on there.

"Q. It will average that?

"A. Yes, the seventy-two hundred acres, I think will.

"Q. The seventy-two hundred and the five hundred acres?

"A. The five hundred acres something like that" (R. 31-32).

Dennison further testified that he actually made a bona fide offer of $65 an acre for this land to the White River Lumber Company, which was refused (R. 138-139). The proposed purchase was made on behalf of the Wood Lumber Company of Memphis, and was to be financed through the Liberty Savings Bank of that city (R. 143).

The value of logs in the immediate vicinity of these lands has been throughout the period in question $20 per thousand feet. This was testified to by the witness Dennison (R. 42) and was practically admitted by appellant's witness Keaton (R. 87-8). We believe the best evidence of these values will be found in appellant's answers to appellee's interrogatories (R. 21). These answers show the average value of logs from the year 1919 to 1925, inclusive, to have been approximately $20.00 per thousand feet. Dennison and Kirkpatrick testified that the cost of cutting and delivering these logs was approximately $6.00 a thousand feet during this period. Appellant's witness Keaton admitted the cost to have been from $5.00 to $8.00 a thousand feet (R. 89).

It will be seen from the foregoing testimony that the net value of these logs after deducting the cost of logging from the price received for the logs was $14.00 a thousand

feet. It can be immediately seen what these logs actually brought net in the market. These figures should amply sustain the testimony placing the value of $65.00 per acre on the land throughout the period in question.

It is true, as appellant has said, that the witness Kirkpatrick was not familiar with the value of timber, but he was very familiar with the lands in question and the amount of timber on them. He testified in detail as to the timber, both as to quality and quantity. For the values we rely on the other testimony. It is likewise true, as appellant has said, that no lands in the county have sold for more than $25.00 per acre, except one tract which sold for $45.00 per acre. This merely substantiates our contention that appellant's lands are more valuable than the other lands in the county.

Appellant states that the value placed by the witness Dennison on these lands was expressly made to apply only to the good lands and that he would pay $65.00 an acre for such lands only as had not been cut over. It will be seen from the above quoted testimony that what the witness actually did testify is that he would want to deduct only such as had been cut *in the last two or three months*. This is for the reason that the witness was basing his estimates of value on the amount of timber on the land two or three months ago. However, inasmuch as this testimony was taken more than three months after the period in controversy in this suit, the timber cut within that time should not be deducted from the value as testified by Dennison.

We have quoted extracts from Dennison's testimony merely because appellant has endeavored to show its lands to be of the same character as the other timber lands in the county.

In arguing the injustice of requiring corporations to pay back taxes when individuals cannot be sued, counsel mention the fact that one Storthz owns a large amount of lands in the county in question, and appellant's witness Keaton testified those lands are of about the same value as the lands of appellant. This testimony is definitely rebutted by the witness Dennison. He was asked to compare the Storthz land, which had recently been sold to the Thane Lumber Company for $13.00 an acre, to the Big Island lands.

"Q. How would that land compare in proportion to the Big Island tract?

"A. I don't think that down there is worth anything like a fourth—at the time it sold" (R. 137).

Assuming the lands sold by Storthz to have been of the value they sold for ($13.00), and assuming the Big Island tract to be worth exactly four times as much (Dennison says they were worth more than that), this would give a value of $52.00 an acre to the Big Island tract. Unquestionably there are some natural persons in the county, whose property is underassessed, but there is no testimony of any nature to show that any individual in the county owns lands nearly so valuable as the Big Island group belonging to appellant. It is true the White River Lumber Company owns many other lands in the county which are not so valuable as those on Big Island, but it is only the latter with which we are now concerned.

On page 4 of appellant's brief it is said the list of lands contains 191 separate descriptions located in 105 different sections in four counties, and that the list was never submitted to any witness, and no mention was ever made in the testimony of any particular tract of land by description. This statement is misleading. The present appeal has no reference whatever to any lands, except those in one body and located on Big Island, embracing approximately 8,000 acres, and in only one county. The Supreme Court of Arkansas declined to consider any of the balance of the lands.

The witnesses plainly stated which of the lands they were familiar with. Dennison testified that all of the lands lie in one township and run north and south, giving the numbers of the townships explicitly (R. 34).

We think the map introduced as an exhibit to Keaton's deposition is of absolutely no assistance in determining the value of any of the timber lands. It has been testified, and it is a matter of universal knowledge, that one tract of timber land may be extremely valuable and the adjoining tract be absolutely worthless. This is, of course, due to the fact that the latter tract may never have had timber of any value upon it, the timber may have been of an inferior grade, it may have been stolen, it may have been burned, or it may have been cut by the owner.

Counsel give several specific examples of underassessments of individuals owning large tracts. The cutover lands are almost worthless and are assessed at $4.00 per

acre, the same amount at which the virgin timber lands on Big Island belonging to appellant have been assessed. The former have been assessed at more than 100 per cent of their value and the latter at not to exceed 10 per cent. We are not asking that the appellant's assessment be raised to the extent of requiring it to pay taxes on the same basis that the owners of cutover timber lands are paying, nor are we asking that they be assessed at the legal rate of 50 per cent. We are merely defending the action of the State Supreme Court in assessing appellant's lands at 30 per cent of their value, the average percentage of assessment in the county, and at a figure slightly above one-half of the legal rate in the State. If appellant is entitled to an assessment of its lands at $4.00 an acre, the present assessment, then other taxpayers in the county are entitled to have their assessments reduced to the same percentage, or to less than 10 per cent of the value of their property. If appellant's lands are assessed at the average rate in the county, it will certainly be no hardship on any one, and no violation of any constitutional provision, either State or Federal.

Counsel contend that the decision of the State court discriminates against appellant because it requires appellant's lands to be assessed at a rate much higher than other similar lands in the county, and, in fact, higher than any other timber lands in the county have ever been assessed. This is, we submit, not an accurate statement. There are no other lands in the county similar to the Big Island group, as we have shown. Furthermore, in considering the average assessment of "other similar lands," we think all lands, or at least all timber lands, should be considered, and not merely the lands containing the better class of timber. It is true the court has raised appellant's assessment above the assessment of any other timber lands per acre, but uniformity, under the State Constitution, must be according to value. Uniformity according to acreage would necessarily be discriminatory. One tract may be worth $100.00 an acre, and the adjoining tract may be practically worthless, as we have seen from the testimony. Clearly, then, there is no uniformity in assessing both tracts at the same amount per acre. Our contention on this point is expressly sustained in the following quotation from Cooley on Taxation:

> "It is self-evident that a property tax of a certain sum imposed on particular property without regard to

value violates the rule as to equality and uniformity where the value of such property varies. To illustrate: *Suppose all farm land should be taxed a dollar an acre. No one would attempt to defend the equality of such a tax as applied to the land of one person worth $100.00 an acre and to the land of another worth $10.00 an acre. The decisions of the courts are all in harmony, in support of this rule.*"

Cooley on Taxation (4th Ed.), Sec. 297.

We have gone into the facts of this case, as disclosed by the testimony, merely to answer counsel's brief. We think the facts in the case will not be reviewed by this court. We are familiar with the rule that the court will sometimes review the facts if closely intermingled with a constitutional question, but it has expressly been held that under circumstances similar to these the facts will not be reviewed.

In the case of *Western Union Telegraph Company* v. *State of Missouri*, 190 U. S. 422, the court said:

> "Plaintiff in error asserts the correctness of the finding of the trial court, and insists that it is the only finding that could have been made, and bases the argument against the taxes assessed on that insistence. But if the finding on the question is one of fact, necessarily we are bound by that made by the Supreme Court of the State."

That case was likewise a tax suit in which there was a discrimination or overvaluation alleged.

See also *Keokuk & Hamilton Bridge Co.* v. *Illinois*, 175 U. S. 626.

In the case of *Michigan Central Railway Co.* v. *Powers*, 201 U. S. 302, the court said:

> "It is charged in the bill that there was a systematic undervaluation of other property in the State, which resulted in denying to this plaintiff the equal protection of the law. The trial court found against this charge. It is enough to say that generally we accept the finding of a trial court upon a question of fact when the testimony respecting it is conflicting."

The latter case involved the same principle involved in the case at bar. We likewise have a conflict in the testimony in our case, and we submit that under the rule above adopted, there should be no review of the facts after they have been expressly found by the chancellor and by the Arkansas Supreme Court.

Counsel, on page 7 of their brief, give their impression of the testimony of the assessors as to the percentage at which property has been assessed in Arkansas County, stating that all of the assessors said that they endeavored to assess the property of the county on a uniform basis, and did so as far as they knew how. We do not, of course, charge any intentional neglect of duty, but we do contend there was a total ignorance of the facts in regard to appellant's lands. Bearing upon these questions we quote the following short excerpts from the testimony:

J. C. CASH, County Assessor from 1919 to 1923, testified:

"Q. Do you know about what basis of valuation, that is, what percentage of actual value property was assessed at during those years?

"A. I couldn't say the actual value, but not exceeding, I would suppose, thirty to thirty-three and a third valuation. Their valuation, it was supposed to be fifty per cent, but I don't think any of it was assessed above a third" (R. 103).

"Q. Are you familiar with the lands and the timber belonging to the defendant in this case, the White River Lumber Company?

"A. No sir, I am not.

"Q. Have you ever seen it?

"A. Not that I know of" (R. 105).

"Q. If a taxpayer would turn in a piece of property that he said—came and told you that property was worth a hundred thousand dollars, and your office would find out to your own satisfaction that property was worth a hundred thousand dollars, what figure would you put that in at?

"A. Well, we tried to put it in at fifty thousand dollars.

"Q. Fifty thousand. Where you knew the value you put it in at fifty per cent?

"A. Yes sir" (R. 105).

"Q. Now, Mr. Cash, do you know how many thousand feet of timber there are on any of the White River Lumber Company's lands?

"A. No sir, I do not.

"Q. You have no idea of the value?

"A. No sir" (R. 108).

M. F. MONTGOMERY, county assessor from 1915 to 1919, testified:

"Q. What per cent has it been assessed at, Mr. Montgomery?

"A. Well, I—I don't know whether it would average a third or not, Mr. Rose, I am not sure; I never figured it out.

"Q. But you would have assessed it at fifty per cent if you knew—

"A. I would have tried to, yes sir" (R. 115).

A. N. BEST, a member of the township board for Chester Township, in Arkansas County, since about 1917, testified:

"Q. Did you assess the virgin lands of the White River Lumber Company at the same you assessed the cut-over lands in the other parts of the county?

"A. Yes sir; all the same.

"Q. What per cent did you assess property in Arkansas County for those years?

"A. Just about fifty.

"Q. About fifty per cent valuation?

"A. From about thirty to fifty per cent valuation.

"Q. If you had been told or had sufficient evidence that the value of those lands or of any other lands was sixty dollars an acre, for instance, what valuation would you have placed on them?

"A. About fifty per cent; about thirty dollars. If it was worth sixty, put it about thirty.

"Q. Why was it you didn't place any of this land at a higher value than four dollars?

"A. I didn't view it and didn't know where it was.

"Q. You didn't go over it?

"A. No; I didn't see it. I didn't know whose it was" (R. 118).

"Q. Have you an automobile, Mr. Best?

"A. Yes sir.

"Q. What kind?

"A. Ford.

"Q. What did you pay for it?

"A. Why, about five hundred and five dollars.

"Q. How much did you assess that for?

"A. Two hundred and fifty dollars.

"Q. You assessed it on the taxbooks for two hundred and fifty dollars?

"A. Yes sir" (R. 120-121).

F. E. STEPHENSON, county assessor from 1922 to 1926, testified:

"Q. Did you make any inspection of those timber lands?

"A. No sir; never did.

"Q. Have you ever seen any of it?

"A. Well, not that I know of" (R. 124).

"Q. Mr. Stephenson, what is the average assessment for—first I will ask you, has the Railroad Commission sent a certificate here requiring any per cent?

"A. Fifty per cent.

"Q. You have received that each year?

"A. Yes sir.

"Q. And what has been your method in assessing?

"A. Well, I have assessed, and I might think at the time I was assessing I would get about fifty per cent, but sometime later I would find out I was wrong. But where I absolutely knew anything of it I have tried to go on the fifty per cent basis" (R. 125).

"Q. The average assessment over the county, what is the average assessment?

"A. Well, I would think about thirty-three and a third" (R. 126).

"Q. Then you don't actually know what any of this land of the—or, how much timber is on any of this land?

"A. No sir; I wouldn't have any more idea than you would" (R. 127).

"Q. Now, if you had had some convincing evidence produced to show you timber land was worth, say sixty-five dollars an acre, would you have raised that timber land?

"A. Yes sir.

"Q. But you didn't have any such evidence?

"A. No sir.

"Q. You didn't know about what the value was?

"A. No sir; no more than Mr. Keaton told me—I talked to him about it.

"Q. That is the White River Lumber Company man?

"A. Yes sir" (R. 129).

The State Supreme Court has held, however, that if there was a fifty per cent basis of assessment, it was not followed, and has relieved appellant from paying taxes except at the average percentage of assessment in that county, or 30 %. The question now is whether appellant is entitled to a still further reduction of its assessment from 30% to less than 10% of the value of its property.

Appellant concedes that the back tax law of Arkansas has been upheld by this court in the case of *Fort Smith Lumber Company* v. *Arkansas*, 251 U. S. 532, as constitutional, but emphasizes the language of the court in the opinion as a possible avenue of escape for it.

In that case the court said:

> "It is to be presumed *until the contrary appears* (italics ours) that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases."

If the facts of any particular case can justify it to be made an exception to that decision, we submit it clearly should not be done in this instance. Abundant relief has already been granted appellant. We believe the testimony fairly shows the lands in question to possess, and to have possessed throughout the period involved, a value in excess of $65.00 per acre. The chancellor reduced this value to $50.00, and the State Supreme Court again reduced it to $40.00. The State Supreme Court also made appellant's assessment only 30 per cent of the value of the property. On over four-fifths of the lands sued on, no recovery at all was allowed. Under the decision of the State Supreme Court there is nothing required of appellant except to pay taxes at the average rate of taxation. We submit that is all that this Honorable Court has ever required.

In the following cases the average rate has been adopted as proper:

German National Bank v. *Kimball*, 103 U. S. 732.

Michigan Central R. R. Co. v. *Powers*, 201 U. S. 245.

See also *Taylor* v. *L. & N. R. R. Co.*, 88 Fed. 350.

Counsel have quoted at some length from a dissenting opinion of Associate Justice Wood of the Arkansas Supreme Court, in another case, in which he questioned the constitutionality of the back tax law. We desire to quote the following language of the court itself in the case at bar. We have italicized certain parts for emphasis. That part of the opinion relating to the constitutionality of the law reads as follows (after citing the case of *State of Arkansas* v. *Ft. Smith Lumber Co., supra*):

> "In upholding the right of the State to sue for these back taxes, it was stated by Mr. Justice Holmes, speaking for the court, that it was within the power of the State, so far as the Constitution of the United States is concerned, to tax its own corporations in respect of the stock held by them in other domestic

corporations, although unincorporated stockholders are exempt from such tax, and that a discrimination between corporations and individuals in regard to such a tax could not be pronounced arbitrary, although the precise ground of policy which led to the distinction did not appear.

"It was there further said: '*The same is true with regard to confining the recovery of back taxes to those due from corporations. It is to be presumed, until the contrary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the State.* See *New York State* v. *Barker*, 179 U. S. 279, 283.'

"Other decisions by the Supreme Court of the United States have upheld the validity of back tax statutes passed by the States which apply only to corporations, upon the ground that the State Legislatures, in passing such statutes, may have ascertained, as a practical matter, that *if such statutes were made applicable to individuals the expense of enforcement would be so great that the law would be without profit to the State. Winona, etc., Land Co.* v. *Minnesota*, 159 U. S. 526. *Weyerhaueser* v. *Minnesota*, 176 U. S. 550; *Florida, C. & P. R. R. Co.* v. *Reynolds*, 183 U. S. 471.

"We may say, therefore, that the statute under which the State has here proceeded does not violate the Constitution of this State or the Constitution of the United States, and that the State may maintain a suit to recover back taxes under a statute which applies only to corporations, the demand for the additional taxes being predicated upon the proposition that there had been an inadequate or insufficient valuation or assessment of the corporate property" (R. 245-246).

Upon the question of the sufficiency of the testimony, the language of the court is as follows:

"We think, however, that the testimony, except as to the Big Island group, was too indefinite and uncertain to measure up to the requirement announced in the case of *State ex rel.* v. *Kansas City & M. Ry. & Bridge Co., supra*, quoted above. The principal witness for the State—one Dennison—candidly admitted

that he had only a very general knowledge of the company's lands except in Arkansas County, and more especially of the Big Island group.

"We are of the opinion that the testimony does not show as to any of the lands except the Big Island group 'any inadequate of insufficient valuation or assessment of such property, or undervaluation thereof,' within the meaning of the rules of law by which that fact is to be determined.

"*As to the Big Island group, consisting of 7964 acres, the testimony is much more definite and certain. This is shown to be a body of land so unusually well timbered as to have a value not possessed by the other timbered lands* which were assessed at from 4 to 5 dollars per acre. *The assessing officers were in ignorance of the quality and quantity of timber which gave this land its greater value. As to this group of lands there was an ignorance of the facts.* The testimony is conflicting as to its value, but we think it was clearly shown that these lands were of an average value during the entire time covered by the assessments in question of $40.00 per acre, taking into account the timber stolen and the timber sold" (R. 249).

Relating to the question of discrimination and uniformity the opinion is as follows:

"As it appears that all other property was assessed at an average of 30 per cent of its market value, these lands should also be assessed at that per cent, and as 30 per cent of $40 is $12, that figure represents the valuation at which the Big Island group should be assessed, less, of course, valuation on which the taxes have been paid.

"It is earnestly argued on behalf of the State that the valuations for purposes of taxation should be assessed at 50 per cent of the market value, as this was the basis fixed by the State Tax Commission, and that any assessment based on a lower per cent of the market value is an undervaluation within the meaning of the statute under which this suit was brought.

"We think, however, that it must appear, from what we have already said, that if the statute is so construed as to permit this to be done, it would offend

against both the uniform clause of the Constitution of the State, quoted above, and the equal protection clause of the Federal Constitution.

"The argument that any assessment at a less per cent of the market value than that fixed by the State Tax Commission is an underassessment, which may be corrected by a back assessment, is so thoroughly answered by the opinion of the Court of Appeals of the Sixth Circuit in the case of *Taylor* v. *Louisville & N. R. Co.*, 88 Fed. 350, that we quote extensively from it. *The opinion was delivered by Judge Taft, then a member of that court and now the Chief Justice of the Supreme Court of the United States.* The opinion contains an exhaustive review of the decisions of the United States Supreme Court, and is one which has been cited and approved by many courts.

"That case is of special value here, as it arose under the taxing laws of the State of Tennessee, and the provision of the Constitution of that State (Article 2, Section 28, Constitution 1870) is so nearly identical with our own on the same subject as to suggest the idea that our provision was taken from the Constitution of that State.

"Under the statutes of that State railroads and certain other property were assessed biennially by a board consisting of three members, known as the 'State Tax Assessors,' whose assessment was subject to review by another board called the 'Board of Equalization,' composed of the Governor, Secretary of State and State Treasurer.

"This State board assessed the property of the plaintiff railroad and all other property which it was required to assess at its real value, whereas it was shown that all other property not assessed by the State Board of Assessors was habitually and intentionally assessed by other assessing officers at not exceeding 75 per cent of its real or correct value.

"The opinion contains a review of many cases and quoted extensively from the opinion of this court in the case of *Ex Parte Fl. Smith & Van Buren Bridge Co.*, 62 Ark. 461. We copy that portion of the opinion, as it is directly in point:

"'In *Ex Parte Ft. Smith & Van Buren Bridge Co.*, 62 Ark. 461, 36 S. W. 1060, the case arose on an appeal from the refusal of the county board of equalization to reduce the taxation of assessment upon the petitioner's bridge. The assessor had assessed one-half of the bridge in Crawford County at $150,000, and the county board of equalization had reduced this assessment to $125,000. At the trial in the circuit court it appeared that $250,000 was a fair market price for the entire bridge, and that $125,000 therefore was the full value of one-half of the bridge. It further appeared that all the real estate in Crawford County was assessed at 50 per cent of its actual value. The appellate court contended that, under the circumstances, the assessment of one-half the bridge should be reduced accordingly to its request of $75,000. The Constitution of the State was exactly in the words of the Tennessee Constitution, to-wit:

"'That all property subject to taxation shall be taxed according to its value, to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the State, and provided further that no one species of property, upon which taxes shall be levied, shall be taxed higher than another species of property of equal value.'

"The law passed in pursuance of this section of the Constitution required the assessors of the counties in the State to assess the real estate at its true market value in money. The court, in construing this question, said:

"'It may be said that, inasmuch as its property was not assessed above its true value, it had no right to complain. But this is not true. It had the right to demand that no unequal burden be imposed upon it by taxation. The duty to contribute to the support of the State Government by the payment of taxes is imposed upon all persons owning property subject to taxation. The Constitution provides that this burden shall be apportioned among them according to the value of their property, to be ascertained as directed by law. When therefore the property of a few is taxed according to its value, and of all others at one-half its value, then the few are required to contribute double their portion of the burden. This is manifestly a

wrong, and justice demands that it be redressed whenever it can be done conformably to the laws. * * * In this case the county court acquired jurisdiction, by the appeal of the bridge company, to grant relief from the illegal, erroneous, or unequal assessment of appellant's property, but did not acquire the right or authority to make the valuation of all real property in the county for the purposes of taxation, in all cases in which it had not been done, the true value, by raising it, or to change the valuation of any property except the bridge. The assessment of no property can be increased without notice first given to the owner by the board of equalization. How, then, was the county court to afford relief to appellant? The only relief it could have afforded was to reduce the valuation so as to make it conform to the standard adopted in the valuation of the other real property in the county, or the *average valuation* of such property. Why should not this relief be granted? The valuation of property is only a constitutional means adopted for the purpose of making the burdens of government bear upon each taxpayer in proportion to the value of his property. The relief suggested accomplishes that end in this case. By granting it, a constitutional right will be enforced, and by denying it, will be withheld, because the means of defeating itself, by the imposition of unequal burdens. To avoid this result, the relief should be granted.'

"The learned Justice also quoted from the case of *Cummings* v. *Bank*, 101 U. S. 153, as follows:

"'But, whatever may be its cause, when it is recognized as the source of manifest injustice to a large class of property, around which the Constitution of the State has thrown the protection of uniformity of taxation and equality of burden, the rule must be held void, and the injustice produced under it must be remedied, so far as the judicial power can give remedy.'

"The decision of the court, so far as it is applicable here, is reflected by the 9th syllabus, which reads as follows:

"'Under the Tennessee Constitution of 1870 (article 2, section 28), declaring that all property shall be taxed 'according to its value,' to be ascertained

as the Legislature shall direct, 'so that taxes shall be equal and uniform throughout the State,' when it is the uniform practice in the various counties of the State to assess real property at not exceeding 75 per cent of its true value, an assessment upon railroad property at its full value violates the uniformity of taxation which is the main purpose of the constitutional provision, and will be enjoined, although this involves a violation of the letter of the State statute passed pursuant to the Constitution, which requires all property to be assessed at its full value.'

"The petition of the State of Tennessee for a writ of certiorari to review this decision was denied by the Supreme Court of the United States on the authority of *Chicago & N. W. Ry. Co.* v. *Osborne*, 146 U. S. 345; *Forsyth* v. *Hammond*, 166 U. S. 506. See also 172 U. S. 647.

"*The basis of assessment which was actually employed in the case of all other property owners must therefore be applied here*, although it does not conform to the directions of the State Tax Commission. This must be done to preserve uniformity" (R. 249-253).

It is seen from the foregoing opinion of the Arkansas Supreme Court that all principles announced by the Federal Courts have been recognized, and actually applied, the judgment being reduced accordingly.

This court has always recognized the principle that "the judiciary should be very reluctant to interfere with the taxing systems of a State, and should never do so unless that which the State attempts to do is in palpable violation of the constitutional rights of the owners of property."

King v. *Mullins*, 171 U. S. 404.

King v. *Panther Lumber Company*, 171 U. S. 437.

In the case of *Jenning* v. *Coal Ridge Improvement & Coal Company*, 147 U. S. 147, the court said:

"The provision in the 14th Amendment, that no State shall deny to any person the equal protection of the laws, does not prevent a State from adjusting its system of taxation in all proper and reasonable ways, nor compel the States to adopt an iron rule of equal taxation."

The case of *People of the State of New York* v. *Barker*, 179 U. S. 279, is squarely in point. In that case the court said:

> "A corporation is not denied the equal protection of the laws of N. Y. Laws 1857, chap. 456, Sec. 3, which, as construed by the highest court of the State, provides an opportunity, in assessing the property of a corporation, to correct an undervaluation first made by the assessors, *without giving the same opportunity to correct an undervaluation of the property of individuals*, so long as the corporation is not assessed on any property not legally taxable, or taxed beyond the actual value of its property, and there is no proof of any general custom to undervalue the property of individuals."

The same principle was announced in the case of *Keokuk & Hamilton Bridge Company* v. *Salm*, 258 U. S. 121.

We submit that this court has already held that where the taxpayer is given the opportunity of contesting the particular assessment, then there is no taking of property without due process of law. The appellant in this case has been given ample opportunity to disprove the allegations of the State. In fact, the burden of proof was upon the State to establish these values, and the State Supreme Court has made its findings upon the testimony.

In the case of *Cincinnati etc., Railroad Company* v. *Kentucky*, 115 U. S. 321, the court said:

> "Whenever, by the laws of a State or by State authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, and provision is made for confirming or contesting the charge thus imposed in the ordinary courts of justice, the judgment in such proceedings does not deprive the owner of his property without due process of law."

Even though the judgment in this case might involve some individual hardship (which, however, we deny) still we think there is clearly no violation of the due process clause.

In the case of *Kirtland* v. *Hotchkiss*, 100 U. S. 491, the court said:

> "So long as a State, by its laws prescribing the mode and subject of taxation, does not intrench upon

> the legitimate authority of the Union, or violate any right recognized or secured by the Constitution of the United States, this court, as between the State and its citizen, can afford him no relief against State taxation, however unjust, oppressive or onerous."

It is, we submit, of no significance that there may be some other property valued at a lower percentage of its value than the assessment sought to be made against appellant's property.

In the case of *German National Bank* v. *Kimball*, 103 U. S. 732, the court said:

> "Where the case made by the complainant is this: that the shares of the bank are taxed at the same per cent on their assessed value as all other property; that the valuation of these shares on which this rate is apportioned is only about half their actual value; that some other property is valued at less than half of its cash value, and for this reason no tax should be paid on the shares of stock of the complainant, the case should be dismissed."

The Supreme Court of Arkansas, in sustaining the legality of the back tax act, cited the case of *Winona & St. Peter Land Company* v. *Minnesota*, 159 U. S. 526. That suit involved the constitutionality of an act of Minnesota providing for the recovery of back taxes upon personal property, but not as to real estate. It was contended that the act was unconstitutional in discriminating against personal property. In sustaining the law, this court said:

> "*The case is different from that of an ordinary tax law* in which there may be some foundation for the claim that the Legislature is expected to make no discrimination, and would not attempt to provide for the collection of taxes on one kind of property without also making provision for collection of taxes on all other property equally subject to taxation. For this statute rests on the assumption that, generally speaking, all property subject to taxation has been reached, and aims only to provide for those accidents which may happen under any system of taxation, in consequence of which here and there some item of property has escaped its proper burden; and it may well be that the Legislature, in view of the probabilities of changes

in the title or *situs* of personal property, might deem it unwise to attempt to charge it with back taxes, while at the same time, by reason of the stationary character of real estate, it might elect to proceed against that. At any rate, if it did so it would violate no provision of the Federal Constitution, and whether it did so or not was a matter to be determined finally by the Supreme Court of the State."

The State Supreme Court also cited the case of *Florida Central & Peninsular Railroad Company* v. *Reynolds*, 183 U. S. 471. That suit involved the constitutionality of a statute of Florida providing for the recovery of back taxes against railroad companies only, no provision being made to recover from any other class of taxpayers. In sustaining the law this court said:

"The single question therefore to consider, is whether there is anything in the Federal Constitution which forbids a State to reach backward and collect taxes from certain kinds of property which were not at the time collected through lack of statutory provisions therefor, or in consequence of a misunderstanding as to the law, or from neglect of administrative officials, without also making provision for collecting the taxes for the same years on other property. • • •

"They are obligations of the highest character, for only as they are discharged is the continued existence of government possible. They are not canceled and discharged by the failure of duty on the part of any tribunal or officer, legislative or administrative. Payment alone discharges the obligation, and until payment the State may proceed by all proper means to compel the performance of the obligation. No statutes of limitation run against the State, and it is a matter of discretion with it to determine how far into the past it will reach to compel performance of this obligation. • • •

"Our conclusion is that, so far as the Federal Constitution is concerned, the Legislature of Florida had the power to compel the collection of delinquent taxes from the railroad companies for the years 1879, 1880, and 1881, even though it made no provision for the collection of delinquent taxes for those years on other property."

It will be seen that the Florida statute was held constitutional, notwithstanding the fact that it applied to corporations and not to natural persons. In fact, the statute did not even apply to all corporations, but only to railroad companies.

III.

THE METHOD OF REASSESSMENT ADOPTED BY THE COURT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FEDERAL CONSTITUTION.

Counsel say that the court has selected 34 tracts of land from 191 tracts owned by appellant and reassessed them on the basis of an average value for a twelve-year period and on an average basis of assessment covering that period; and they contend that such a procedure amounts to a denial to appellant of the equal protection of the laws, because the lands of natural persons are assessed according to the value of each separate tract and for each separate year on the actual basis of assessment for that year.

The language of the State Supreme Court on these points is as follows:

> "The testimony is conflicting as to its value, but we think it was clearly shown that these lands were of an average value during the entire time covered by the assessments in question of $40 per acre, taking into account the timber stolen and the timber sold" (R. 249).
>
> "As it appears that all other property was assessed at an average of 30 per cent of its market value, these lands should also be assessed at that per cent, and as 30 per cent of $40 is $12, that figure represents the valuation at which the Big Island group should be assessed, less, of course, valuation on which the taxes have been paid" (R. 249).
>
> "The basis of assessment which was actually employed in the case of all other property owners must therefore be applied here, although it does not conform to the directions of the State Tax Commission. This must be done to preserve uniformity" (R. 253).

From the above language it is difficult to see how appellant can say that the court adopted the average percentage of assessment over the 12-year period as a whole. As a matter of fact, it may have had that in mind, but we think it more likely that what the court actually meant was that the average assessment of all property in the county during each of the twelve years in question was 30 per cent. We do not think it makes any substantial difference, however, on which basis the court placed the assessment. Especially is this true as to the value of the lands, for they were of approximately the same value throughout the 12-year period.

As to the matter of valuation, counsel have quoted Arkansas statutes and decisions relating to the manner of valuing and assessing property for taxation. The majority of these statutes and decisions relate to tax sales for failure to pay taxes assessed, and are governed by the specific statutes relating thereto. We believe that counsel have failed to distinguish between "valuation" and "assessment" of property for taxation. It is unqestionably true, as has been contended, that assessments must be made of each parcel separately. This has expressly been done by the decrees of both the trial court and the State Supreme Court. The "valuation," however, is, we submit, a different proposition. In valuing timber lands it is not only unnecessary, but is positively forbidden, that the taxing authorities value separately each small parcel of a large tract when the entire tract is owned by a single taxpayer. The tract must be taken as a whole. This is done even by the tax assessors. We submit that the assessment of lands for taxation under the laws of Arkansas merely means the placing on the taxbooks of the value of the property as found by the assessor. These figures must be placed against the respective subdivisions separately, and not the entire valuation against the entire tract. This is merely a ministerial act. The valuation of the property is the important thing and it is governed by entirely different principles.

Cooley states the following rule:

> "In valuing timber lands, a division of the lands into zones for the purpose of assessment has been upheld. *In valuing a tract of timber, the value of the tract should be estimated as a unit, by estimating the value of the entire tract of timber in lumber, and then*

deducting therefrom the cost of logging the entire tract" (Citing cases).

Cooley on Taxation, (4th Ed.), Sec. 1151.

The most carefully considered case which we have been able to find, applying this principle, is that of *Crowell & Spencer Lumber Co.* v. *Word*, (La.) 93 So. 678. In that case the court was concerned with the manner of determining the value of a large amount of timber land, just as in our case, and stated the rule as follows:

> "At the threshold of the discussion in this case as to the cash value of the timber in question, it may be well to quote the following citation from Cooley on Taxation (3rd Ed.), page 756: 'In valuing land which is to be assessed as one parcel, *the estimate should be of the whole, and not parts separately and then added together.*' This rule is specially applicable to timbered lands in large tracts and is in harmony with the universal custom of persons buying and selling and dealing in timber in this State of estimating the amount and value of the timber at a flat price per thousand feet according to the amount on the entire tract, and then considering the cost of logging the whole or entire tract as a unit, and not the various subdivisions."

We also call the court's attention to the case of *Clallam Lumber Co.* v. *Clallam County*, 245 Fed. 399, which also states this rule.

The Arkansas Supreme Court has considered this question in connection with the assessment of land for taxation and has laid down the following principle:

> "The board in placing a value upon the timber lands took into consideration the logging conditions and everything else that would tend to affect the value of timber lands. This was right. It was shown that *large tracts of timber lands situated in a body and owned by the same persons were of much greater value than smaller tracts owned by separate persons and which do not lie in a body.* The reason is that the only practical way to log the lands is to build tramroads into the timber, and this can only be successfully done when one person or corporation owns a large body of land. * * * The board is required, in making the

valuation, to have due regard to the relative situation, quality of soil, improvements and natural or artificial advantages. In short, it must consider the advantages or disadvantages of location, the quality of soil, *the quantity and quality of standing timber*, as well as all other elements which enter into and constitute the value of the land. These are the plainly expressed rules and principles upon which our Constitution and statutes contemplate that the valuation shall be made."

Drew County Timber Co. v. *Board of Equalization*, 124 Ark. 763.

It is further contended by appellant that because the State has not specifically mentioned each year separately in the testimony as to values, there is created a discrimination against appellant. The witnesses testified as to the value throughout the period in question, meaning, of course, that the value placed upon the lands was the same in each of said years. They did testify specifically, mentioning the years, as to the value of standing timber and the cost of cutting and logging the same. The answers filed by appellant covering appellee's interrogatories also specifically state the prices received for timber cut from adjacent lands for each of the years 1919 to 1925.

We submit the State Supreme Court's construction of its own statutes and Constitution is always held to be conclusive by this court, except when it will amount to a violation of some provision of the Federal Constitution. There is clearly no such violation in the present decision, and the matter of what the State statutes and Constitution require has been definitely passed upon by the State court and with fairness to appellant.

Counsel say the testimony shows that large quantities of timber have been stolen or sold during recent years and that no attempt is made by appellee to show from which of the lands the timber was taken. We have already covered that point and have shown that no thefts have occurred on the Big Island lands, except possibly a few trees (R. 147), and that the values placed upon that group would apply for the period in question on down to three months prior to the taking of the depositions. The latter date was subsequent to the filing of this suit. It is therefore wholly immaterial how much timber has been stolen or sold from the other tracts, as we are not concerned with that question on this appeal.

It is insisted that there is no testimony of values prior to the year 1920. The witness Dennison testified he had been logging in that same section for nine or ten years, and the witness Kirkpatrick testified that he had been over these lands two or three times a year for the last fifteen years. They testified that the values they placed on the lands or the amount of timber thereon would be the same throughout these respective periods. However, we submit, it is not even necessary that testimony relate to the precise time in question in proving values.

> "An observer who is sufficiently familiar with property to make his inference serviceable, may state his estimate of its value, because of the necessities of the case, this being as a practical matter the only available method of proof in a great many instances. The evidence is most freely received where the facts upon which the estimate is based cannot be placed before the jury or are of a nature beyond ordinary experience, and where more cogent evidence is not available. *The evidence may properly relate to a time prior or subsequent to that involved in the controversy*, provided the court regards the period as not too remote to be relevant, the length of the interval merely affecting the weight of the evidence."

22 C. J. 575;

Johnston v. *Farmers Fire Insurance Co.*, 106 Mich. 96;

Boyd v. *Grove*, 89 Or. 80;

Doane v. *Garretson*, 24 Iowa 351;

Central Branch Union Pacific Railway Co. v. *Andrews*, 37 Kan. 162;

Greenfield First National Bank v. *Coffin*, 162 Mass. 180;

Conner v. *Levinson*, 115 Mich. 297;

Wyatt v. *Seaboard Air Line Railroad Co.*, 156 N. C. 307;

Galveston, etc., Railroad Co. v. *Jones*, 123 S. W. 737.

Appellant complains that if its lands are to be assessed upon an average basis as to time, it is unfair to cover only this twelve-year period, as appellant is thereby deprived of the benefit of an average based on lower values prior to the period mentioned in the complaint, or lower values caused by the cutting of timber in future years. Appellant has been given full benefit under its contention as to the cutting of timber, as all of the lands from which any substantial amount of timber has been cut have been relieved from the payment of any back taxes. As to the matter of lower values in prior years, it seems that counsel are inconsistent in contending they would derive any benefit by including former years, as none of the timber had been cut from the lands then, and they were more valuable then than later.

Counsel say that it seems rather strange that with the testimony varying at amounts from 20 to 33 1/3 per cent, the chancery court should adopt for all time the basis of 30 per cent, nearly the highest amount given, and the Supreme Court should affirm that basis. We submit this statement is not accurate. By the list of transfers filed by appellant itself many pieces of property are assessed at far above 30 per cent, and in the list filed by appellee a far greater number. A number of these transfers show assessments at from 50 to 100 per cent of the value of the property conveyed.

Appellant has filed an "appendix" to its brief, which contains a copy of a number of the statutes of Arkansas, and also what might seem to be a verbatim copy of the testimony. There are numerous omissions, however, some of which we have pointed out.

On page 99 of their brief, counsel mention three specific pieces of property showing assessments ranging from 8 to 16 per cent of the value. We feel that it would only lengthen our brief to specifically set out the numerous transfers in which assessments have been from 30 to even 100 per cent of the value of the property. They are all contained in the list of transfers hereinbefore referred to. Assessments below the average rate can, of course, always be found. However, all assessments, however high or low, have been considered in finding the average.

We respectfully submit that, regardless of what view this court may take of the method adopted by the State

court in arriving at the values and the average assessment of property for taxation, there has clearly been no violation of any provision of the Federal Constitution.

Counsel state the method adopted for assessing property in back-tax suits is different from that used in original assessments and is therefore discriminatory. In the case of *Winona & St. Peter Land Co.* v. *Minnesota, supra*, it was expressly held that the fact that there was "a different mode of assessment of property which has escaped taxation in prior years from the general mode of assessment of property, does not deprive the property owner of any constitutional right." We submit that authority is squarely in point.

While uniformity of taxation requires uniformity in the mode of assessment as well as in the rate of taxation, yet it has always been held that the uniformity thus required is uniformity in result and not actual uniformity in methods. The rule is stated in Cooley on Taxation (4 Ed.), Section 299, and the authorities collected therein. Appellant clearly has no complaint to make about the results of the use of this system in the present case.

If there can be any objection to the use of an average system in arriving at the basis of assessment in this case, we believe it operates against appellant rather than appellee. This court has always held there is no presumption of a violation of duty by the taxing authorities. In this case they are presumed to have assessed property at the legal rate of 50 per cent. The burden is therefore upon appellant to show that there has been an assessment of property generally at a lower percentage of its value. If no such showing has been made for any year in question, then that objection should be raised against appellant rather than against appellee, and the legal rate applied.

In conclusion, we submit that to grant appellant's request and allow the assessment of its lands to remain at $4 an acre would be a flagrant discrimination against the Long-Bell Lumber Company, whose lands have been assessed at $10 an acre. This assessment is covered by stipulation of counsel (R. 228). It was insisted in the State court that there was no testimony to show this to be timber land. F. E. Stephenson, the assessor, explicitly testified that this is timber land and mentioned the raise in its assessment from $6 to $10 an acre (R. 126). Although the

Long-Bell land is inferior to that of appellant, even that land is assessed more than twice as much per acre. This injustice would be in addition to the discrimination against the owners of cut over lands already referred to, and also against other property owners generally in the county.

Respectfully submitted,

H. W. APPLEGATE,
Attorney General of the State of Arkansas,

R. E. L. JOHNSON,
JOHN M. ROSE,
Special Counsel for the State of Arkansas.

IN THE

Supreme Court of the United States

October Term, 1926.

Western Union Telegraph Company, Appellant,

v. No. 101.

State of Arkansas, ex rel. H. W. Applegate, as Attorney General, Appellee.

OPPOSITION TO PETITION FOR REHEARING

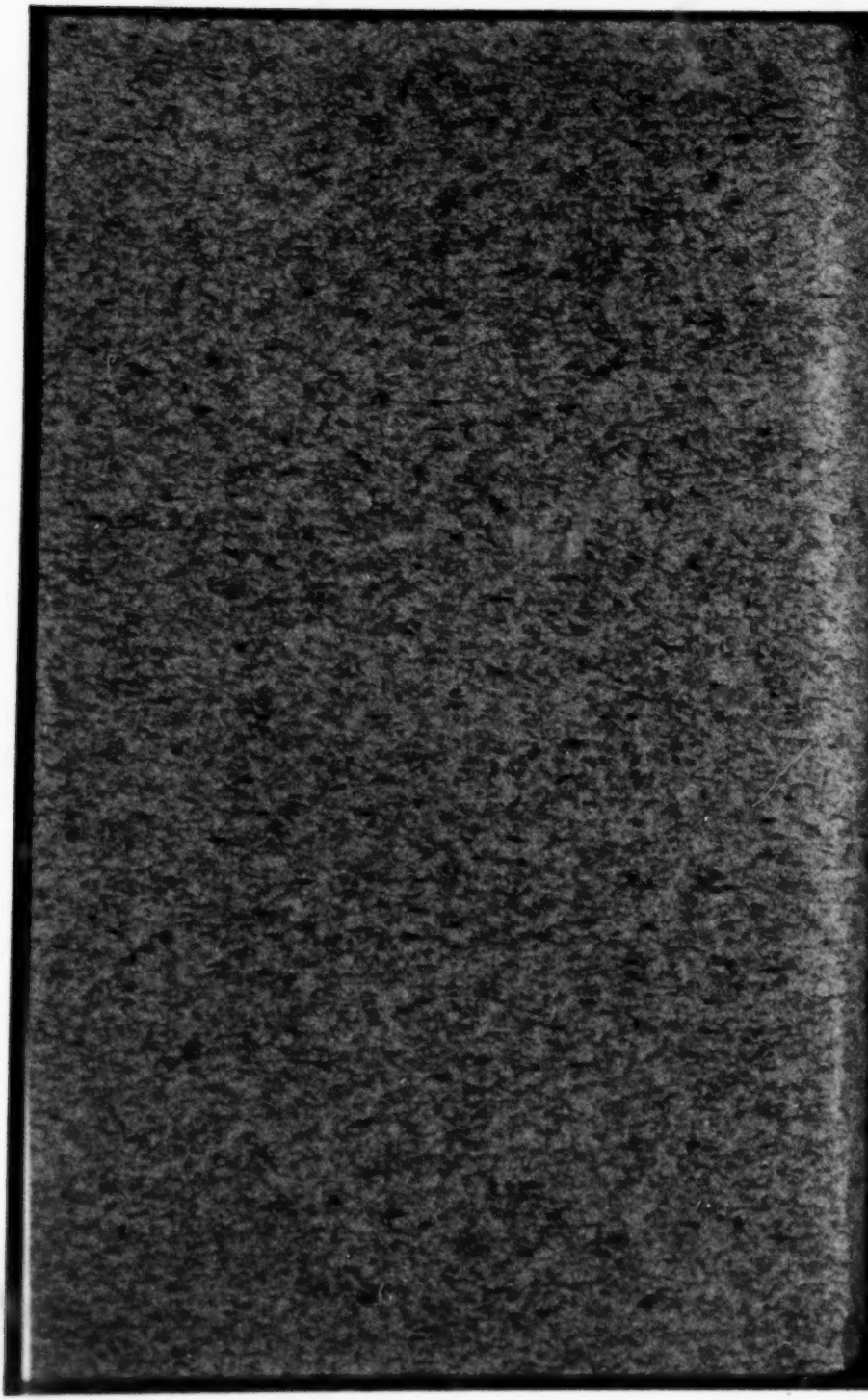
H. W. Applegate,

Attorney General of the State of Arkansas.

E. H. L. Pickens,

John M. Hall,

Special Counsel for the State of Arkansas.



IN THE

Supreme Court of the United States

October Term, 1928.

WHITE RIVER LUMBER COMPANY ..... *Appellant*,

v. No. 101.

STATE OF ARKANSAS, EX REL. H. W. APPLEGATE, AS ATTORNEY GENERAL ..... *Appellee*.

OPPOSITION TO PETITION FOR REHEARING

Appellant's petition for rehearing is based solely on specifications of error Nos. 3, 4, 5, 6 and 7, no mention being made of Nos. 1, 2 and 8. The substance of the specifications now in question is as follows:

No. 3 alleges that the Supreme Court of Arkansas erred in valuing and assessing 34 separate tracts of timber land according to the average value of all rather than requiring each tract to be valued and assessed separately like the lands of natural persons.

No. 4: That the court erred in valuing and assessing appellant's lands according to their average value

for the twelve year period rather than requiring them to be valued and assessed for each two year period separately as the lands of natural persons are valued and assessed.

No. 5: That the court erred in raising appellant's assessment when the testimony upon which its action was based was confined partly to a later period.

No. 6: That the court erred in assessing appellant's lands on the basis of an average value of all of the lands during all of the years without requiring each tract to be assessed separately for each year separately.

No. 7: That the court erred in assessing appellant's lands higher than other lands of like character and value in that taxing district were assessed.

In the above specifications appellant alleged that the action of the State court denied appellant the equal protection of the laws and took its property without due process of law in violation of the Federal Constitution.

This court declined to pass upon these specifications of error because it does not appear from the record that the constitutional question was presented in or passed upon by the State Supreme Court.

Counsel for appellant now say, on page 2 of their petition:

"The question involved did not arise until the decision of this case by the Supreme Court of Arkan-

sas, and consequently could not have been raised by appellant prior to that time, nor in any other way than by a petition for rehearing in that court."

We believe the above admission by appellant that the question *was not raised except by petition for rehearing in the State court* automatically defeats the present petition. This court has expressly so held in the case of *Kansas City Star Co.* v. *Julian*, 215 U. S. 589, in which it was said:

> "A writ of error will not lie to a State court on the ground that a Federal question is involved, where such question was first raised in the State court in the petition for rehearing."

In the following cases, among others, this rule was also applied:

Mergenthaler Linotype Co. v. *Davis*, 251 U. S. 256.

Pogdras De La Lande v. *Louisiana*, 18 How. 192.

Sayward v. *Denny*, 158 U. S. 180.

Capital National Bank v. *First National Bank*, 172 U. S. 425.

Turner v. *Richardson*, 180 U. S. 87.

Weber v. *Rogan*, 188 U. S. 10.

Mutual Life Insurance Co. v. *McGrew*, 188 U. S. 291.

Since it is admitted by appellant that the question was not raised in the State court except in its petition for rehearing, we submit the petition now under consideration is without merit.

Counsel say:

"The question involved did not arise until the decision of this case by the Supreme Court of Arkansas."

We submit that is not true. The Arkansas Supreme Court made the same finding that was made by the trial court except that it declined to render judgment on the 37,000-acre group of lands, and it reduced the value of the Big Island group from $50 an acre (found by the trial court) to $40 an acre. The finding of the State Supreme Court was much more favorable to appellant than that of the trial court.

The same questions of fact and of law were presented to both the chancellor and the State Supreme Court. Necessarily the same questions arose, as there was, of course, only one transcript of testimony, and it was used before both courts. If, as counsel say, the testimony was partly of a date subsequent to years for which taxes are sought, that question necessarily was before the chancellor and should have been raised before the State Supreme Court on the constitutional ground now set up. This was not done, and it does not appear anywhere in the record.

If appellant's lands were assessed higher than other similar lands of equal value in the taxing dis-

trict, as is alleged in specification of error No. 7, then that offense was necessarily first committed by the trial court, as that court's assessment was even higher than that of the State Supreme Court. This being true, it was incumbent upon counsel to raise their consitutional objection in the State court on appeal, and not wait until filing a petition for rehearing to do so.

The questions as to the average basis of valuation and assessment should likewise have been raised before filing a petition for rehearing, as the decision of the chancellor was exactly the same on these points as that of the State Supreme Court, except that the latter court reduced the values.

We think it will be seen from the foregoing self-evident facts that counsel are in error when they say the questions now presented did not arise until after the decision by the State Supreme Court.

There are cited in appellant's petition (page 3) three decisions to sustain their contention that the constitutional question involved was sufficiently presented in the State court, to wit:

Whitney v. *California*, 274 U. S. 357.

Marvin v. *Trout*, 199 U. S. 212.

Consolidated Turnpike Co. v. *N. & O. V. Ry. Co.*, 228 U. S. 596.

By merely a casual reference to those cases it will be seen they are not in point. In each of them there had been filed as a part of the record *a certificate*

of the presiding judge of the State Supreme Court, or the court itself, that the constitutional question involved had been presented. In this case there was not, nor does appellant contend there was, any certificate whatever filed. The authorities cited on this point are therefore, we submit, of no value in this case.

The only other authorities cited by appellant are the following:

Cincinnati Packet Co. v. *Bay*, 200 U. S. 179.

C. R. I. & P. Ry. Co. v. *Perry*, 259 U. S. 548.

By reading counsel's quotations on pages 3 and 4 it will be seen the cases are not in point. The former involved a "certificate" similar to those mentioned above. In the latter the court "actually dealt with and passed upon the question raised." In neither was the question presented for the first time in a petition for rehearing. They are therefore not authorities sustaining appellant's contention in this case.

On page 3 of their petition counsel say:

"The petition (for rehearing) was denied without an opinion."

If, then, the constitutional question was raised only in the petition for rehearing, which is conceded, and the State court wrote no opinion in overruling the petition, there is necessarily no showing whatever that the constitutional question was ever considered by that court. As a matter of fact, these questions

could have been decided by the court without the consideration of the constitutional question; it did not *necessarily* arise. In view of the authorities we have already cited, we think, however, that this point is immaterial.

On page 4 counsel quote a stipulation entered into by the respective parties as follows:

"It is agreed by the parties hereto that the entire record in this case is necessary for the consideration of the points involved."

It was not, of course, the intention of either party to try to bring before the court something that was not, and could not be, a part of the record, nor does the stipulation so state. It was merely for the purpose of showing that the entire record, rather than only a part of it, was necessary for the decision of this court.

Counsel say (page 4) the clerk of this court omitted the petition for rehearing from the record, and "upon inquiry of the clerk, having in charge the printing of records, as to why this petition for rehearing had been omitted, counsel for appellant was informed that the omission was made pursuant to instructions from this court, to the effect that petitions for rehearing should not be printed in the record."

Counsel must have known that a petition for rehearing in the State court constitutes no part of the record on appeal to this court.

Grame v. *Mutual Assur. Soc.*, 154 U. S. 676.

Simmerman v. *Nebraska*, 116 U. S. 54.

This being true, counsel had no right to insist upon the printing of the petition for rehearing, nor could the respective attorneys have accomplished that purpose by stipulation if it had in fact been attemped. If printed, the court would not, we assume, have considered it a part of the record.

We think all questions raised in appellant's petition have been answered. It should not be assumed, however, that appellee admits any of the *facts* alleged in the specifications of error. They have all been vigorously denied throughout the suit, and the State court has made its findings upon conflicting testimony.

Respectfully submitted,

H. W. Applegate,
Attorney General of the State of Arkansas.,

R. E. L. Johnson,
John M. Rose,
Special Counsel for the State of Arkansas.

SUPREME COURT OF THE UNITED STATES.

No. 101.—October Term, 1928.

White River Lumber Company, Plaintiff in Error, *vs.* The State of Arkansas *ex rel.* H. W. Applegate, Attorney General.	In Error to the Supreme Court of the State of Arkansas.

[May 27, 1929.]

Mr. Justice Sanford delivered the opinion of the Court.

This case involves a question as to the constitutional validity of the back tax law of Arkansas. Sec. 1 of Act No. 169 of the Arkansas Acts of 1913—which is set forth in the margin[1]—provides that where, because of any inadequate or insufficient valuation or assessment, or undervaluation, of any property which belonged to any corporation at the time taxes thereon should have been properly assessed and paid, there are overdue and unpaid taxes thereon

[1] This section amended § 1 of Act No. 354 of the Acts of 1911, so as to read: "Where the Attorney General is satisfied from his own investigations, or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid; that it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated . . . ." C. & M. Digest, § 10204. It was also provided by an earlier act that the State and its political subdivisions should have a lien on the property for the payment of such overdue taxes, to be enforced by this suit. C. & M. Digest, § 10207.

owing to the State or a political subdivision thereof by any corporation, the Attorney General shall institute a suit in chancery in the name of the State for the collection thereof.

In July, 1925, the State of Arkansas, proceeding under this section, brought suit in a chancery court, on the relation of the Attorney General, against the White River Lumber Company, a foreign corporation doing business in the State, for the recovery of back taxes. The complaint, as amended, alleged that the Company owned large tracts of valuable timber lands in four counties of the State,[1] which were worth from $30 to $50 an acre but had been undervalued and underassessed for taxation for the years 1915 to 1926, inclusive, at a valuation of about $4 per acre; and prayed judgment for overdue and unpaid taxes for those years at 50 per cent of their true value—the basis of valuation that had been fixed by an order of the State Tax Commission — less the assessments actually made. The Company, answering, denied that there had been any undervaluation; claimed that the lands had been valued on the same basis as like timber lands owned by other individuals and corporations; and alleged that section 1 of the law as attempted to be enforced against it, was repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

The chancery court—finding that for the years in question the value of the lands constituting the "Big Island group,"[2] was $50 an acre, and that of the remaining lands $33.33 an acre, and that the average assessments of other lands in these counties had been at approximately 30 per cent of their value—back assessed the Big Island group at $15 per acre, and the other lands at $10 per acre, less credits for timber stolen and sold and the valuations at which they had been originally assessed; and, declared a lien on the several tracts for the amount of the back taxes due on them, respectively, as thus reassessed.

Upon cross appeals the Supreme Court held that the fact that the statute authorizing suits for back taxes applied only to corporations, did not render it repugnant to the Fourteenth Amendment; that under it the State might maintain suit to recover additional taxes on the ground that there had been an inadequate or insufficient valuation or assessment of the corporate property; that in such case the reassessment should be on the same

[1] These contained 41,500 acres.

[2] These contained 7,964 acres.

basis as that upon which the original and inadequate assessment should have been made; and that as it appeared that all other property was assessed at an average of 30 per cent of its value, the Company's lands, under the uniformity clause of the State Constitution, should be assessed at that per cent, despite the fact that the State Commission had fixed a higher basis. Applying these rules of law the court found from the testimony that it was not shown that there had been any inadequate or insufficient valuation of any of the lands except the Big Island group, but that this group was a body of lands that were unusually well timbered, had a value not possessed by the other timbered lands which were assessed at from $4 to $5 per acre, and "were of an average value, during the entire time covered by the assessments in question, of $40 per acre, taking into account the timber stolen and the timber sold". And holding that they should be assessed at a valuation of 30 per cent of that amount, that is, $12 per acre, less the valuation on which the taxes had been paid, the decree of the chancery court was modified so as to permit a recovery of back taxes on the Big Island group only, and on those lands only to the extent indicated. 175 Ark. 956.

1. It is urged here that the back tax act of Arkansas, in providing for the reassessment of property of corporations by judicial proceedings and the imposition of additional taxes thereon after the payment of the taxes assessed by the duly constituted assessing authorities, and in not providing for such reassessment of property belonging to natural persons, denies to the Company and other corporations the equal protection of the laws in violation of the Fourteenth Amendment.

We cannot sustain this contention. It is unquestioned that the Arkansas statutes providing for the original assessment of property for taxation make no distinction between the lands of corporations and those of natural persons and that it is the duty of the assessing officers to assess them in like manner, according to their value. And the question now presented is merely whether a statute authorizing the collection of back taxes on lands which have escaped their just burden of taxation, is invalid because it is limited to the recovery of additional taxes on the lands of corporations which have been assessed at an inadequate or insufficient valuation, and does not extend to the recovery of such ad-

ditional taxes on the lands of natural persons, which may likewise have been assessed at an inadequate or insufficient valuation. The decision in *Quaker City Cab Co.* v. *Penna.*, 277 U. S. 389, on which the Company chiefly relies, involved merely a question as to the invalidity of the discrimination made by a statute levying an original tax on the gross receipts derived by corporations from their operation of taxicabs. As there was no question whatever as to back taxes and no back tax act was involved, the decision is not controlling in the present case.

In *Whitney* v. *California*, 274 U. S. 357, 370, we said—citing various cases—that: "A statute does not violate the equal protection clause merely because it is not all-embracing. . . . A State may properly direct its legislation against what it deems an existing evil without covering the whole field of possible abuses. . . . The statute must be presumed to be aimed at an evil where experience shows it to be most felt, and to be deemed by the legislature coextensive with the practical need; and is not to be overthrown merely because other instances may be suggested to which also it might have been applied; that being a matter for the legislature to determine unless the case is very clear . . . It is not open to objection unless the classification is so lacking in any adequate or reasonable basis as to preclude the assumption that it was made in the exercise of the legislative judgment and discretion." These and like principles have been applied by this Court in four cases dealing directly with classifications made in back tax statutes and similar legislation.

In *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526, 539, in which it was held that a state statute providing for the collection of back taxes on real property without including a like provision for collecting back taxes on personal property, should be sustained, the Court said: "The case is different from that of an ordinary tax law in which there may be some foundation for the claim that the legislature is expected to make no discrimination . . . For this statute rests on the assumption that, generally speaking, all property subject to taxation has been reached and aims only to provide for those accidents which may happen under any system of taxation, in consequence of which here and there some item of property has escaped its proper burden; and it may well be that the legislature in view of the probabilities of changes in the title or situs

of personal property might deem it unwise to attempt to charge it with back taxes, while at the same time, by reason of the stationary character of real estate, it might elect to proceed against that. At any rate, if it did so it would violate no provision of the Federal Constitution. . . ."

In *New York State* v. *Barker*, 179 U. S. 279, 285, a general state statute imposed a tax on the real estate of individuals and corporations upon its full and true value as found by the assessors. In the case of individuals no resort was permitted to any other proceeding by which the tax could be increased by any subsequent assessment on the difference between the assessed and the actual value. But in the case of corporations, if real estate should be mistakenly assessed at an undervaluation another statute afforded an opportunity to reach the difference between the assessed and actual value by making an assessment upon the actual value of the corporate capital, including the real estate. The only claim was that "in this opportunity to correct a mistaken assessment upon its real estate in the case of a corporation when assessed upon its capital, which does not exist in the case of an individual, the corporation is denied the equal protection of the laws." In overruling this contention the court said: "The mere fact that the law gives the assessors in the case of corporations two chances to arrive at a correct valuation of their real estate, when they have but one in the case of individuals, cannot be held to be a denial to the corporations of the equal protection of the laws, so long as the real estate of the individual is, in fact, generally assessed at its full value."

In *Florida Central, &c. R'd Co.* v. *Reynolds*, 183 U. S. 471, 480, in which it was held that in so far as the Federal Constitution was concerned the legislature had the power to compel the collection of delinquent taxes from railroad companies for certain years, even though it made no provision for the collection of delinquent taxes for those years on other property, the Court, quoting with approval from the *Winona Land Co.* case, said: "If the State, as has been seen, has the power, in the first instance, to classify property for taxation, it has the same right of classification as to property which in past years has escaped taxation. We must assume that the legislature acts according to its judgment for the best interests of the State. A wrong intent can not be imputed to it. It may

have found that the railroad delinquent tax was large, and the delinquent tax on other property was small and not worth the trouble of special provision therefor. If taxes are to be regarded as mere debts, then the effort of the State to collect from one debtor is not prejudiced by its failure to make like effort to collect from another. And if regarded in the truer light as a contribution to the support of government, then it does not lie in the mouth of one called upon to make his contribution to complain that some other person has not been coerced into a like contribution."

In *Ft. Smith Lumber Co.* v. *Arkansas*, 251 U. S. 532, 534, the State, proceeding under the statute here involved, had brought suit against a corporation to recover back taxes alleged to be due upon a proper valuation of its capital stock by reason of the fact that in assessing its value there had been omitted the value of stock owned by the corporation in two other corporations, each of which had paid full taxes. The corporation defended "on the ground that individuals are not taxed for such stock or subject to suit for back taxes, and that the taxation is double, setting up the Fourteenth Amendment." This Court, in overruling the defense "with regard to confining the recovery of back taxes to those due from corporations," said: "It is to be presumed, until the contrary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the State. See *New York* v. *Barker*, 179 U. S. 279, 283."

We see no ground for distinguishing the *Ft. Smith Lumber Co.* case from that now under consideration, and on that authority and for the reasons stated therein and in the earlier cases which we have cited, hold that the back tax statute of Arkansas, although confined to the property of corporations, does not deny to them the equal protection of the laws in violation of the Fourteenth Amendment.

2. It is also urged in behalf of the Company, that even if the back tax statute be valid on its face, it was so applied by the Supreme Court of the State in the present case, by selecting thirty-four tracts of land, constituting the Big Island group, and reassessing the same on the basis of their average value for twelve years on an average basis of assessment instead of assessing them in accordance with the Arkansas statutes according to the actual value

of each separate tract for each separate year on the actual basis of assessment for that year, as to constitute a denial of the equal protection of the laws. It does not appear, however, from the record that this constitutional question was presented in or passed upon by the Supreme Court of the State; and as it was sought to raise this question for the first time by assignments of error in this Court, it is necessarily excluded from our consideration. *Whitney* v. *California*, *supra*, 316; and cases therein cited.

3. No other federal question is presented by the record for our consideration. The decree is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 101.—October Term, 1928.

White River Lumber Company, Plaintiff in Error, *vs.* The State of Arkansas *ex rel.* H. W. Applegate, Attorney General.	In Error to the Supreme Court of the State of Arkansas.

[May 27, 1929.]

Mr. Justice Butler, dissenting.

Plaintiff in error attacks a provision of an Arkansas statute,* on the ground that it is repugnant to the equal protection clause of the Fourteenth Amendment.

It directs that, where because of undervaluation there are overdue and unpaid taxes upon any property which belonged to a corporation at the time such taxes should have been assessed and

*The original Act was passed in 1887. Laws 1887, p. 33. There was an amendment in 1911, which is not material here. Laws 1911, p. 324. It was again amended in 1913. Laws 1913, p. 724. (The words added by the last amendment are italicized, and those omitted by it are included in brackets.)

"Where the Attorney General is satisfied from his own investigation or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, *or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof*, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation, [or] upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes, or any corporation [or person] claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant. . . ." § 10204 Crawford & Moses' Digest.

paid, the Attorney General shall bring a suit to collect them unless the title passes to an individual before suit. No law of the State creates or permits the enforcement of any like or similar liability against the property of individuals. The fact that the property is owned by a corporation is the sole basis of the classification. The claim here is for additional taxes upon land, and the land alone is liable. The owner cannot be held for either the original or back taxes. See decision below, 175 Ark. 956, 973. Like lands of individuals are shown to have been grossly underassessed. And if such lands were owned by corporations, they would be liable for back taxes.

The discrimination is deliberate. The statute, passed in 1887, is entitled "An Act to provide for the collection of overdue taxes from corporations doing business in this State". It was amended in 1913. In *State ex rel. Attorney General* v. *K. C. & M. Ry. and Bridge Co.*, 117 Ark. 606, the court said (p. 613): "The object of the amendatory act of 1913 was to give a complete remedy for the recovery of back taxes due by a corporation upon any property then in the State, which belonged to any corporation at the time such taxes should have been properly assessed and paid. It takes away the right conferred by the original act to proceed against property where the title had passed to an individual, although it had been owned by a corporation when the assessment was made and the taxes were payable . . .". And see concurring opinion, *State ex rel. Attorney General* v. *Bodcaw Lumber Co.*, 128 Ark. 505, 523.

This suit was brought in 1925; its original purpose was to recover from plaintiff in error additional taxes, for each of the 10 years ending with 1924, on the value of the company's "capital stock or intangible property". The complaint stated that plaintiff in error had paid taxes upon its real and personal property. It alleged that the assessed value of its tangible property "upon which defendant had actually paid taxes as provided by statute" was much less than the market value of its capital stock, and judgment was demanded against plaintiff in error for back taxes on such intangibles.

But it was found that the company had no property in Arkansas other than real estate, and about the same time the state supreme court, in *State* v. *Lyon Oil and Refining Co.*, [1926] 171

Ark. 209, held that the capital stock of a foreign corporation which is neither located nor used within the State cannot be taxed therein.

Then the complaint was amended to allege that the company owned timber lands in Arkansas which had been underassessed in each of the 12 years ending with 1926. The chancery court charged the lands with back taxes. The supreme court held that there had been undervaluation of only a part of the company's lands and that the amount of back taxes imposed by the decree should be reduced accordingly.

Such taxes are imposed upon the sole ground that through mistake the original assessments were too low. The procedure for the enforcement of taxes on land is not affected by the character of the owner; the State looks only to the land. Lands of individuals are as likely to be erroneously undervalued as are those belonging to corporations. But the law directs the Attorney General to collect back taxes not in all cases where the taxes originally levied and paid were based on undervaluation, but only where property belongs to corporations at the time of the assessment and also at time of suit. He is not permitted to bring suit to make such collections against lands owned by individuals even if they were owned by corporations when undertaxed. As here applied, the Act singles out the lands of a corporation, leaving those of natural persons free from such claims. Transfer to an individual, whenever made, prevents the operation of the Act.

This case cannot be distinguished from *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389. There the tax in controversy was imposed upon the corporation's gross receipts derived from the operation of taxicabs. But the gross receipts of individuals in the same line of business were not taxed. And for that reason the law was held repugnant to the equal protection clause. The Court said (p. 402): "Here the tax is one that can be laid upon receipts belonging to a natural person quite as conveniently as upon those of a corporation. It is not peculiarly applicable to corporations as are taxes on their capital stock or franchises. . . . The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference . . . in the situation or char-

acter of the property employed." It is not pretended that such back taxes on lands of individuals may not be imposed as conveniently as upon those of corporations. The Arkansas law imposes a tax liability on lands of a corporation to which lands of an individual are not subjected. That case rules this one.

But there are cited in support of the decision below *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526; *New York State* v. *Barker*, 179 U. S. 279, 285; *Florida Central, &c. R. R. Co.* v. *Reynolds*, 183 U. S. 471, 480; and *Fort Smith Lumber Co.* v. *Arkansas*, 251 U. S. 532, 534.

Winona & St. Peter Land Co. v. *Minnesota*, *supra*, did not present any question under the equal protection clause. A state law provided generally for the assessment and taxation of both real and personal property which had been omitted from the tax roll. Lands of the company were assessed under the Act. It insisted (p. 528) that the Act violated the contract clause and the due process clause.

In support of the latter contention, the company argued that, as to back taxes on personal property, the Act was invalid because it failed to provide for notice to owners before the charges were fixed against them; that it could not be assumed that the legislature would attempt to enforce back taxes against lands alone, and that therefore the whole Act fell. But the state court declined to pass upon that contention, 40 Minn. 512, 521, and held that in any event back taxes on personal property might be enforced by an ordinary personal action. This court said (p. 539): "It seems to us . . . that the assumption that it cannot be believed that the legislature would never seek to provide for the collection of back taxes on real property without at the same time including therein a like provision for collecting back taxes on personal property, cannot be sustained. The case is different from that of an ordinary tax law in which there may be some foundation for the claim that the legislature is expected to make no discrimination, and would not attempt to provide for the collection of taxes on one kind of property without also making provision for collection of taxes on all other property equally subject to taxation . . . and it may well be that the legislature in view of the probabilities of changes in the title or situs of personal property might deem it unwise to attempt to charge it with back taxes, while at the same

time, by reason of the stationary character of real estate, it might elect to proceed against that." The court concluded that in any event it was for the state court to determine whether the Act was severable.

Both in Minnesota and Arkansas, taxes and back taxes on personal property are enforceable against the owner; taxes and back taxes on land are enforced only against the land. The Minnesota Act did not attempt to make any classification. Moreover, a discrimination between personal property and land is essentially different from that attempted by the Arkansas statute. The equal protection clause does not require that, for purposes of taxation, land must be put in the class with merchandise, moneys, credits, livestock and other personal property. The differences in kind are sufficient to warrant classification.

In *New York State* v. *Barker, supra*, the controversy concerned an assessment of a corporation's capital stock. It was a proceeding against the corporation itself. There was no question in the case of increasing, reassessing or collecting taxes on land. The real estate of corporations and individuals was directly assessed, and the law required this assessment to be at actual value. In addition, there was imposed on corporations a capital stock tax, to be determined by deducting from total value of all its property, tangible and intangible, its debts and the assessed value of real estate, the remainder to be taxed as capital stock.

The taxing officers found the "actual value" of real estate to be $965,000 and added other property, making total gross assets, $1,095,049; they deduced debts, $329,050, and "assessed value" of real estate, $600,000, leaving $165,999, to be taxed as capital stock. The corporation insisted that in determining total gross assets the assessed value of the real estate should be substituted for its actual value; that would leave nothing to be taxed as capital stock.

Its contention was that the taking of its real estate at actual value instead of assessed value denied to it equal protection of the laws. This court pointed out (p. 284) that the failure to assess the company's real estate at its actual value for separate taxation and the use of actual value to ascertain the capital stock tax could work no denial of equal protection if the real estate of individuals was in fact assessed at its full and true value as re-

quired by law. And it said: "There is no allegation . . that there has been any undervaluation of real estate, either with regard to individuals or corporations. . . . (p. 285). But we are . . asked . . in the absence of allegations or proof of habitual, or indeed of any undervaluation, to assume or take judicial notice of its existence, notwithstanding such undervaluation would constitute a clear violation of the law of the State. . . . (p. 286). Whether, if the case were proved, as assumed by counsel, it would in fact amount to any such discrimination against corporations as to work a denial to the plaintiff of the equal protection of the laws, is a question not raised by this record, and, therefore, not necessary to be decided." It requires no discussion to show that this case is not in point.

Florida Central, &c. Railroad Co. v. *Reynolds*, *supra*, considered a Florida statute providing for collection of back taxes on railroad properties. The single question was (p. 474) whether to reach backward and collect taxes from certain kinds of property without also making provision for collecting taxes on other kinds of property transgressed the equal protection clause. It was held, as is well understood, that railroads so differ from other kinds of property that they may be separately classified. The case has no bearing here.

In *Fort Smith Lumber Co.* v. *Arkansas*, *supra*, the suit was to enforce an obligation of the corporation itself and not merely a claim for taxes against its land. The company in that case owned stock in two other Arkansas corporations and claimed it was entitled to omit such shares from the taxable value of its own stock. It defended on the ground that individuals are not taxed on such stock or subject to suits for back taxes. The Court said: "If the State of Arkansas wished to discourage but not to forbid the holding of stock in one corporation by another and sought to attain the result by this tax or if it simply saw fit to make corporations pay for the privilege, there would be nothing in the Constitution to hinder. . . . The same is true with regard to confining the recovery of back taxes to those due from corporations. It is to be presumed, until the contrary appears, that there were reasons for more strenuous efforts to collect admitted dues from corporations than in other cases, and we cannot pronounce it an unlawful policy on the part of the State".

This court assumed that the special burden was imposed in pursuit of a definite purpose on the part of the State in respect of incorporated owners of stock in Arkansas corporations. That decision rests upon the ground that the tax was peculiarly applicable to corporations. But a tax on land is not.

As the back taxes claimed are enforceable only against the land, there is no basis for the suggestion that there exists here any reason for more strenuous efforts to collect from corporations than from natural persons.

And there is no basis for an assumption like that made in the *Fort Smith Lumber Co.* case. The classification, at least when applied to land, is fanciful and capricious. *Liggett Co.* v. *Baldridge*, 278 U. S. 105, 113.

The decree should be reversed.

The CHIEF JUSTICE and Mr. Justice VAN DEVANTER concur in this opinion.